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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X
UNITED STATES OF AMERICA, : 15-CR-637 (KAM)
Plaintiff, :
-against- : United States Courthouse
MARTIN SHKRELI, : Brooklyn, New York
Defendant. : Monday, July 24, 2017
- - - - -X : 9:00 a.m.

TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
BEFORE THE HONORABLE KIYO A. MATSUMOTO
UNITED STATES DISTRICT JUDGE, AND A JURY

A P P E A R A N C E S:

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PROCEEDINGS RECORDED BY STENOGRAPHIC MACHINE SHORTHAND,
TRANSCRIPT PRODUCED BY COMPUTER-ASSISTED TRANSCRIPTION.

1 (In open court; outside the presence of the jury.)

2 THE COURT: Since we adjourned Friday, the parties
3 have submitted ten different submissions, which I want to
4 say frankly I don't appreciate. I think it's avoidable,
5 could have been avoidable, and I know that I had asked for
6 some of the submissions because as the week evolved the
7 parties were raising issues that hadn't previously been
8 discussed. Specifically the defense raised a theory that
9 there's no duty to disclose in regard to Count 7, and that
10 prompted a lot of briefing, which I think is helpful, but I
11 think that it does require for all parties and the Court a
12 lot of extra time and effort to sort out.

13 We also had submissions on the settlement
14 agreements and submissions on exhibits that the defense had
15 objected to, specifically the e-mails. Again, to do this in
16 ten submissions over the weekend, I think when we've got a
17 jury here on a Monday is somewhat unfair to the Court.
18 There are multiple lawyers on each side and there's me and
19 my clerk, and we've been working around the clock throughout
20 the weekend trying to address all the issues today.

21 I don't know whether it's a lack of communication
22 among the parties or whether there's been some reason that
23 these couldn't have been brought to my attention earlier,
24 but it makes it very difficult. So I am prepared to make
25 ruling to the best of my ability at this time on certain

1 things.

2 The one issue that I'm not going to address right
3 now is the charge regarding the duty to disclosure, which I
4 said, was a new theory that the parties have been scrambling
5 the address. Partly by reference to Delaware law, partly by
6 reference to the law in the circuit regarding conspiracy to
7 commit wire fraud. But I feel that we need more time to
8 process those arguments.

9 First with regard to e-mails that Mr. Agnifilo
10 submitted specific objections to on Friday afternoon after
11 we adjourned, I do find, and I've read the Government's
12 submissions as well, that these statements are admissible as
13 party admissions. They are being offered here to an adverse
14 party, they're statements of party opponent or its agents
15 and employees. As we know lawyers are also agents and
16 employees and can be included in the parameters of 801. And
17 in addition, they are submitted and admissible as
18 co-conspirator statements.

19 With regard to the Rule 106 initial statements,
20 they're either unrelated to the substance of the e-mail or
21 they are self-serving hearsay on part of the defendant. So
22 the additional e-mails, I think in two instances are not
23 admissible.

24 With regard to the settlement agreements, we have
25 multiple additional submissions on that as well. I think as

1 a general matter, they're relevant to Count 7. Admission of
2 those agreements would not be unduly prejudicial and don't
3 pose any Fifth Amendment issues, because the defense has had
4 ample notice. And despite its arguments to the contrary,
5 there's -- there is an ability on the defense's part to
6 *subpoena* these witnesses and have them testify.

7 These particular agreements involved
8 MSMB Healthcare investor Michael Lavelle and Spencer
9 Spielberg and Retrophin.

10 The Government, as we know, argued these are
11 instrumentality for the wire fraud conspiracy charged in
12 Count 7 to the superseding indictment and the defense
13 objects that these agreements without testimony of
14 Mr. Lavelle and Mr. Spielberg would be unfair, that the
15 agreements are irrelevant and violate Mr. Shkreli's Fifth
16 Amendment right to due process and also in terms of the 403
17 balancing test would be unduly prejudicial.

18 With regard to relevance, these are relevant to
19 the charges in Count 7. The defense argues that they're
20 only relevant if they are instruments of fraud and that the
21 Government cannot show that they are fraud without the
22 testimony of Mr. Lavelle and Mr. Spielberg. It appears that
23 the hearsay objection that the defense raised with regard to
24 the prescription agreement, which are different, have not
25 been raised with regard to the settlement agreement.

1 The documents are directly relevant to the conduct
2 charged in Count 7. As we know, to be relevant, evidence
3 need not be sufficient by itself to prove a fact at issue
4 much less to prove it beyond a reasonable doubt, instead
5 what is required is that the proper evidence could affect
6 the mix of material information before the jury as found by
7 the Second Circuit in *United States versus Quattrone*, 441
8 F3d, 153 and 158.

9 The Government's theory, as we know, is that
10 Mr. Shkreli misappropriated Retrophin assets by using stock
11 and cash of Retrophin to pay off investors in his MSMB hedge
12 fund. The two settlement agreements at issue are evidence
13 of Retrophin providing shares and stock of Retrophin to
14 investors in the hedge funds in return for litigation
15 releases, and therefore they need the low bar for relevance.

16 Now, the Fifth Amendment issue is what I will
17 address next. But first let me mention that the defense has
18 conceded that the confrontation clause right under the Fifth
19 Amendment does not apply to the settlement agreement because
20 they are nontestimonial.

21 Instead the defendant argues that introduction of
22 settlement agreements without accompanying witness testimony
23 violate the Fifth Amendment right to due process.

24 Mr. Shkreli emphasized that his due process right to
25 confrontation through cross-examination of individuals whom

1 the Government alleges are victims of fraud. These
2 agreements do not -- admission of the agreements will not
3 infringe on Mr. Shkreli's due process rights.

4 First he has had ample notice of these agreements.
5 They are provided to the defense, they were given notice
6 that these agreements were on the Government's exhibit list,
7 and the fact that the Government has chosen not to call
8 witness who were involved in the agreement does not violate
9 Mr. Shkreli's due process rights, because as we know the
10 Government is not obligated to call witnesses to testify
11 regarding otherwise admissible evidence, and these
12 agreements are otherwise admissible. I recognize that the
13 defense expects that he could elicit from these investors
14 statements relating to their decision to invest in
15 MSMB Healthcare.

16 But I think on the one hand the defense claims
17 that is Mr. Lavelle will testify that he invested in
18 MSMB Healthcare because of his cousin Kevin Mulleady and not
19 because of Mr. Shkreli.

20 The Government has repeatedly stated, however,
21 that it will not argue about Lavelle and Spielberg relied on
22 the statements or admissions by Mr. Shkreli at the time of
23 the investment in MSMB Healthcare. The key issue, as
24 defense acknowledges, is whether these MSMB Healthcare
25 investors who complained about their investment returns and

1 then sought to obtain more than they were being offered in
2 settlement in Retrophin assets is directly on point with
3 Count 7. The reason for they complaint is the distinct
4 issue from the propriety of the settlement with Retrophin,
5 which is what is at issue in Count 7.

6 With regard to the defense objections under
7 Rule 403, that the admission of the agreements will create
8 unfair prejudice because the jury will conclude that the
9 settlement agreements demonstrated that Mr. Shkreli lied and
10 that the jurors will be confused as to where the fraud
11 allegedly lies and may decide that the alleged fraud is
12 complete when the funds are transferred to MSMB Healthcare
13 for investment. That's in their letter, Document No. 279,
14 at Page 5. The Government has stated it will not argue that
15 the settlement agreements are evidence of fraud at the time
16 of Mr. Lavelle's and Mr. Spielberg's initial investment.

17 So it's not -- the focus is not on defrauding the
18 investor in Count 7 but rather the fraud against Retrophin,
19 vis-à-vis the settlement agreement.

20 If there's argument or to the extent there's
21 argument regarding whether or not Mr. Lavelle and
22 Mr. Spielberg were misled about the value of their
23 MSMB Healthcare holdings after they invested, such argument
24 will be necessarily based on the performance statements and
25 other documents which are either already in evidence or will

1 be in evidence as statements of a party opponent or
2 statements of an agent of the party opponent.

3 The jury, as we know, will be instructed
4 extensively on the various counts, which include Count 7
5 relating to the alleged misappropriation of Retrophin
6 assets. And the Government is expected, and I believe has
7 argued, that these agreements are evidence of that count.
8 Again, not in relation to initial representations made to
9 the investors at the time of the -- of the investment.

10 I believe the jury will be able to distinguish
11 between the counts relating to misstatements -- alleged
12 misstatements to MSMB investors and the charges in Count 7
13 regarding the alleged misappropriation of Retrophin funds
14 and assets.

15 The defense also objects to the admission of the
16 disputed documents citing law of the case, in its letter
17 last Wednesday. Although I did, in fact, make rulings
18 during testimony of the individual investors regarding the
19 subjective factors for their investment. And the reason I
20 did that was because I believe that as stated that the
21 testimony was relevant to aid the jury's understanding of
22 what a reasonably investor may consider making an investment
23 decision. Given that ruling, if the defense chose to call
24 Mr. Lavelle and Mr. Spielberg they could elicit testimony
25 regarding the reasons for their investments with

1 MSMB Healthcare and could solicit any views that those
2 investors had regarding what was important to their
3 investment decision.

4 My ruling in allowing evidence and testimony
5 regarding the specific investor's investment decisions does
6 not change the objective standard, the objective nature of
7 materiality test under the securities and wire fraud laws.

8 And I refer to *United States versus Franke* 2017
9 *Westlaw* 946727 at asterisk 2 decided March 8, 2017, it is a
10 summary order which discusses the standard of materiality
11 particularly in the *United States versus Nader*, N-A-D-E-R,
12 527 U.S. 1 at Page 24 to 25 decided by the Supreme Court in
13 1999 and notes that incorporate it is common law objective
14 standard.

15 So for those reasons the settlement agreements of
16 Mr. Lavelle and Spencer Spielberg are admissible.

17 Now, the next issue arises because, as I said, the
18 defense raised an argument last week that there was no duty
19 to disclose, and I think that the Government in response
20 cited Delaware law, which I agree with the defense's view
21 that it doesn't really apply to the facts that we have here.
22 Its's not -- it's not an agreement of this type discussed in
23 Delaware law, and as the defense pointed out, that the
24 legislation was discussing what agreements may or may not be
25 voidable and under what circumstances. So I don't think

1 that those -- that specific provision of Delaware law
2 necessarily can create the duty to disclose to the Board
3 certain of the transactions at issue in this case.

4 We are still in the process of trying to
5 straighten out the law. I'm not sure that we even have to
6 refer to Delaware law. I think there's evidence in the
7 record that there was a communication to Mr. Shkreli that he
8 had a duty, a loyalty of Retrophin by virtue of his stature
9 of -- as CEO and a board member of Retrophin. And the issue
10 in Count 7, as I had understood it originally, was that
11 there were statements and material misstatements made in
12 order to use Retrophin funds to pay off MSMB Healthcare and
13 MSMB Capital and Elea Capital investors.

14 The duty to disclose arises and raises a new issue
15 of whether or not there were omissions that can constitute
16 the charged offense, and as I said, we're sorting out the
17 law because as we know, Count 7 is a conspiracy charge not
18 accepted in this count.

19 And we would be prepared when we submit the
20 instructions for the parties' review to set forth what we
21 think is the best iteration of the law to the extent there's
22 going to be an argument that there was no duty to disclose,
23 which I think is the defense's theory at this point. Am I
24 correct?

25 MR. AGNIFILO: The argument that this all spawned

Proceedings

4616

1 from that we made that caused this slurry of briefing was
2 that Mr. Shkreli broke no law or no rule in Delaware or
3 anywhere else that obligated him as the CEO to do or not do
4 anything in particular. So we weren't really talking about
5 fiduciary duty because the way that came up and I think it
6 came up on Thursday is we were saying that that -- there's
7 been no evidence in the case up to that point of a rule or a
8 law that was broke in doing this.

9 In other words, why can't the CEO do this and
10 that's what prompted the Government to cite to 144 and then
11 we had vast litigation. So that's -- that's really what
12 kind of jump started all of this.

13 So before I answer Your Honor's question directly
14 I haven't even had a chance to even speak to my colleagues
15 about that, but that wasn't the crux of the argument. The
16 crux of the argument was that he didn't break a law or rule.
17 So it's slightly different than where we are now.

18 THE COURT: All right. Well, I think that in, you
19 know, when reading the brief and understanding what the
20 parties intended to do, I think we got some word by phone on
21 Friday evening that there might be, you know, dueling
22 witnesses on Delaware law. I thought that would just add a
23 lot of confusion to the jury and, you know, if you have two
24 different statements of law, you know, it kind of undermines
25 whatever instruction I'm going to give them.

Proceedings

4617

1 And I want to really be sure that what role, if
2 any, Delaware law plays in this whole thing.

3 So that's why I didn't think it would be
4 appropriate and it could be more confusing for the jury to
5 bring in dueling witnesses regarding what Delaware law
6 requires.

7 I was hoping that the parties could agree based on
8 their research on Delaware case law about some of those
9 issues that it may be that the appropriate instruction could
10 focus on the actual count in the superseding indictment
11 without reference to independent state law. And so long as
12 the instruction tethers to the evidence, hopefully the Court
13 should not be -- it should not be infirmed, so I am hoping
14 that we can come up with an appropriate instruction.

15 We had hoped to post instructions either later
16 today or first thing in the morning but because of all these
17 submissions I think the latest one came in last night around
18 10:00 or something. What time was it? It was late.

19 MR. AGNIFILO: I know it wasn't that late.

20 THE COURT: Well, it was late. We were working on
21 the instructions, we're up to 97 pages, but this does create
22 the need to work --

23 MR. AGNIFILO: I understand.

24 THE COURT: -- a new instruction into the mix if
25 the theory is there's no duty.

Proceedings

4618

1 MR. AGNIFILO: Right.

2 THE COURT: All right.

3 MR. AGNIFILO: Just at this point our -- is the
4 Court prepared -- I'm trying to figure out because I know
5 the Court is too, you know, what the next three days are
6 going to look like. I mean, I know that we have three
7 witnesses lined up today. Two I think are relatively short,
8 not too long. The Kay statement I think is a very
9 substantial witness. And so I don't want to be caught with
10 the Court wanting us to do something and then, you know, we
11 don't know in time.

12 And I don't know what that would be, but I know
13 part of, I think, the process that Your Honor's going to
14 follow is Your Honor's going to post propose charges and
15 then have us opine and 95 percent of the charge, I think,
16 will be very much noncontroversial. I think we're obviously
17 going focus on no ultimate harm and probably in that area,
18 and so I just want to make sure that we're in a position, if
19 we get opinions on that, that would give them sufficiently
20 in advance that the Court and the Government would have a
21 change to consider them. So I'm looking forward, you know,
22 trying to figure out what's going to happen when.

23 THE COURT: Well, first of all, as you know, I
24 asked for proposed charges months ago and the deadline has
25 come and gone. So we're working with what we have. I'm not

1 open to getting new charges.

2 Although I would make an exception if the evidence
3 at trial warranted a particular charge that's been proposed.

4 But what I would do is I would post the proposed
5 instructions and give the parties probably half a day to
6 review it and to give me feedback with citations of law as
7 to what instructions they object to or objections as to how
8 instructions could be clarified or tweaked to make it more
9 precise and more understandable for the jurors. Because
10 part of what we have, as you know, the conspiracy charges is
11 an obligation to explain what conspiracy is and then to
12 explain what the underlying elements are in sort of a
13 general way. But as we know, the Government doesn't have to
14 prove beyond a reasonable doubt the elements of the
15 underlying offense. So I want to make sure that we don't
16 confuse the jury and tell them a legal standard that is --
17 that is improper.

18 So then we would have the charging conference and
19 we would go through whatever particular charges have drawn
20 an objection, and we try to get it resolved. And what we
21 true to do is incorporate, I think for the most part the
22 defendant's side of the sand and we've incorporated that
23 with the charges proposed by the Government, we've made sure
24 as best we can that it's still consistent with the Supreme
25 Court Second Circuit law and we've tried to put out what we

Proceedings

4620

1 hope is the clear iteration. And sometimes, frankly, we've
2 used the submission almost verbatim from the Government
3 because it is correct and it has been used in the past and
4 the Second Circuit has endorsed the language, but it's not
5 to say that we haven't hold to incorporate it and looked at
6 the citation exam that the defense has proposed.

7 And as I said, we're open to suggestions regarding
8 clarification for the language, but not to hold new -- new
9 instructions.

10 Was the Government -- I mean, did the defense want
11 to press the advice of counsel instructions?

12 MR. BRAFMAN: Can we have until the lunch break to
13 advise Your Honor on that and also to advise Your Honor with
14 respect to a charge on if the defendant does not testify and
15 presenting witnesses?

16 THE COURT: Okay, sure. We have it in there.
17 Right now we have a charge saying you can't discuss it or
18 think about it in your deliberations.

19 MR. BRAFMAN: Okay.

20 THE COURT: But we can always change that.

21 MR. BRAFMAN: Okay. Well, there is a -- something
22 that we want to discuss among ourselves, I don't want to
23 delay the process with respect to whether you give a
24 separate charge on reliance on counsel as opposed to
25 incorporating some language in the good faith instruction.

Proceedings

4621

1 And so we want to see exactly how we propose that and you
2 can -- we'll inform the Government -- the Court by the lunch
3 hour or soon after the lunch hour.

4 THE COURT: So it's going to be kind of like a
5 hybrid.

6 MR. BRAFMAN: I believe so.

7 THE COURT: Sort of not really an advice of
8 counsel, but not necessarily.

9 MR. BRAFMAN: Well --

10 THE COURT: I mean, I would lay out the elements
11 of what an advice of counsel's opinion is because I think
12 that's appropriate.

13 MR. BRAFMAN: Let us have an opportunity just to
14 talk about it.

15 THE COURT: Sure.

16 All right. Is there anything else we need to
17 address?

18 MS. KASULIS: Your Honor, one more issue in light
19 of Your Honor's ruling today regarding the e-mails in
20 particular with respect to Special Agent Ricciardi we did
21 disclose an additional e-mail on Friday night to Your Honor
22 and to defense. I think in light of the Court's ruling my
23 hope is that over the lunch break we can speak with the
24 defense and hopefully just have no further issues with
25 respect to any evidentiary objections for Special Agent

Proceedings

4622

1 Ricciardi because as I discussed the morning with the
2 defense I think ideally we would just not have -- we have
3 vetted all of our evidentiary issues with respect to Special
4 Agent Ricciardi's testimony and I can just move sort of
5 large chunks of evidence in at one time and then step
6 through them without having to go through the process of
7 moving to admit each single document and then having to do
8 sidebar and things along those lines. So I'm hopeful in
9 light of the Court's ruling this morning that we can work
10 this out over lunch with the defense so that special agent
11 testimony goes in smoothly and as expeditiously as possible
12 for all parties and the jury.

13 MR. BRAFMAN: We'll do our best.

14 THE COURT: All right. Thank you.

15 MR. BRAFMAN: Your Honor, just so the record is
16 clear and obviously we still have time to object during the
17 charging conference, but just so the record is clear,
18 Your Honor have essentially ruled that the settlement
19 agreements for Lavelle and Spielberg would be admitted
20 without them having to call them. I think we have preserved
21 our objection to the issue of whether any settlement or
22 consulting agreements could come in absent the witness who
23 is consulting with the settlement agreement it relates to.

24 So I think I don't want to repeat myself, but just
25 so the record is clear, by sitting silently Your Honor made

Proceedings

4623

1 that ruling, we're not waiving that objection.

2 THE COURT: No, I understand.

3 MR. BRAFMAN: Okay.

4 THE COURT: I think you have multiple
5 submissions --

6 MR. BRAFMAN: Yes, Your Honor.

7 THE COURT: -- stating your position and I
8 understand --

9 MR. BRAFMAN: Thank you.

10 THE COURT: -- it's not a ruling that you're
11 necessarily without objection.

12 MR. BRAFMAN: Thank you.

13 THE COURT: All right. Are we ready to proceed
14 with our next witness?

15 Let me see if all the jurors are here.

16 THE COURTROOM DEPUTY: Yes, ma'am.

17 THE COURT: They are.

18 I really don't like having them wait.

19 Unfortunately it became necessary because of all the
20 submissions.

21 (Pause in proceedings.)

22 (Jury enters.)

23 (Jury present.)

24 THE COURT: Good morning, members of the jury.

25 All are present, please have a seat.

Barnett - Kasulis - Direct

4624

1 Sorry to keep you waiting this morning.

2 Is the Government prepared to call its next
3 witness?

4 MS. KASULIS: Yes, Your Honor. The Government
5 called Rob Barnett to the stand.

6 THE COURT: All right, thank you.

7 (Enter witness.)

8 THE WITNESS: Good morning.

9 THE COURT: Good morning, how are you?

10 THE WITNESS: Good.

11 **R O B E R T B A R N E T T,**

12 called as a witness having been

13 first duly sworn/affirmed, was examined and
14 testified as follows:

15 THE COURTROOM DEPUTY: Please have a seat. Please
16 state and spell your name for the record.

17 THE WITNESS: Yes. Robert Barnett, R-O-B-E-R-T,
18 B-A-R-N-E-T-T.

19 THE COURT: Thank you. Please proceed.

20 MS. KASULIS: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MS. KASULIS:

23 Q Good morning, Mr. Barnett.

24 A Good morning.

25 Q Where do you live?

Barnett - Kasulis - Direct

4625

1 A San Francisco, California.

2 Q And where are you employed?

3 A Valuation Research Corporation.

4 Q Is that also known as VRC?

5 A Yes.

6 Q What is VRC?

7 A VRC is a financial advisory services firm that works
8 with an independent client base. It largely consists of
9 corporations and asset managers, namely, private equity
10 firms, venture capital firms, institutional investors. VRC
11 performs business enterprise valuations so it values the
12 entire enterprise itself. We also value the securities that
13 they issue such as equity, debt, hybrid securities, their
14 derivatives, hence the right-hand side of the balance sheet.
15 And then on the left-hand side we value the assets as well,
16 so intangible assets and tangible assets such as property
17 planned equipment and fixed assets and intangible assets,
18 you know, like goodwill, trade names, patents, those kind of
19 things.

20 Q What is your position at VRC?

21 A I'm a senior vice president.

22 Q For how long have you worked at VRC?

23 A Since December, 2010.

24 Q Can you please briefly describe your education for the
25 jury?

Barnett - Kasulis - Direct

4626

1 A Sure. I've completed high school. I have an
2 undergraduate degree, a Bachelor of Science in
3 bioengineering from the University of California San Diego,
4 and I have a Master's in business administration from
5 Georgetown University.

6 Q Can you also step the jury through your employment
7 history?

8 A Yes. Prior to VRC most recently I worked in valuation
9 service practices at Ernst & Young. I was a large
10 accounting firm as well as Marsh & McLennan, which is a
11 public company and KPMG as well in a tax practice or
12 transfer pricing, economic consulting services valuation
13 group.

14 Q You mentioned that you are a senior vice president at
15 VRC. What are your job responsibilities?

16 A There's a few. Largely it's the management of
17 engagements, so valuation engagements as well as the
18 execution of those engagements and business development, so
19 marketing and such, the client base, primarily for me is the
20 corporation's private equity firms and some venture capital.

21 Q And were you a senior vice president in the -- in the
22 2012 time period?

23 A Yes, I was.

24 Q Now you had mentioned valuations. What are valuations?

25 A Yeah, so a valuation simply is the analysis of a

Barnett - Kasulis - Direct

4627

1 specifically defined subject interest for the expressed
2 purpose of providing either a point estimate or a range of
3 value of that subject interest as of a specific valuation
4 date. So the interest must be clearly defined. We may
5 provide a point estimate or a range and the valuation date
6 is also very important. So it's an analysis.

7 Q And what kinds of things can you perform a valuation
8 regarding?

9 A Yeah. Primarily for us it -- we have people that
10 literally do machinery and equipment, real estate and actual
11 personal property. For me, it's more of a business. So an
12 operating entity or what we call a business enterprise and
13 then more specifically -- so that would be very global.
14 More specifically it would be the securities that they issue
15 to finance themselves. So that would be the equity
16 securities, it can be debt securities, something we call
17 hybrid securities, which is a kind of a mixture we do and
18 then derivatives, which are security that ties to another
19 line.

20 Q Now, did there come a point in time when you provided
21 services to an entity named MSMB?

22 A Yes.

23 Q And what time period was that?

24 A First half of 2012.

25 Q And how did that come about?

Barnett - Kasulis - Direct

4628

1 A We were engaged through our New York office and I was
2 brought in to help manage and/or execute that engagement.

3 Q And when you say you were engaged through the New York
4 office, was there anyone in particular who you dealt with in
5 VRC's New York office?

6 A Yes, Raymond Weisner.

7 Q And what was your understanding of what MSMB was?

8 A Basically an asset manager of funds of sorts.

9 Q And with respect to the MSMB engagement, what were you
10 engaged to do?

11 A We were engaged to value securities held by MSMB in
12 Retrophin, LLC.

13 Q Who did you deal with at MSMB as part of this
14 engagement?

15 A Jackson Su.

16 Q And what was your understanding of who Jackson Su was
17 at MSMB?

18 A Just that he was a member of the fund. I didn't have
19 any operational sense.

20 Q Did you have any contact with the defendant Martin
21 Shkreli at all during this engagement?

22 A No.

23 Q Now, I'm showing you what has been marked for
24 identification behind Tab Number 4 of your binder as the
25 Government Exhibit 127-4.

Barnett - Kasulis - Direct

4629

1 A Yes.

2 Q Do you recognize this document?

3 A Yes, I do. This is an e-mail from Ray. I am copied
4 and it's outlining the service order for MSMB Healthcare.
5 So a signed letter means there's an engagement underway.

6 Q And the date of the e-mail is March 19, 2012?

7 A Correct.

8 Q And when you say Ray is that the Ray Weisner that you
9 mentioned earlier?

10 A That's right.

11 MS. KASULIS: The Government moves Exhibit 127-4
12 into evidence.

13 MR. BRAFMAN: No objection.

14 THE COURT: We receive 127-4.

15 (Government's Exhibit 127-4 so marked and received
16 in evidence.)

17 BY MS. KASULIS:

18 Q So let's start with the cover e-mail. Do you see at
19 the bottom of this e-mail from Jackson Su to an Allison
20 Russo dated March 19, 2012, with the title Proposal For
21 Valuation Services VRC. Do you see that?

22 A I do.

23 Q And then Mr. Su writes, "Did Martin sign this and we
24 returned," with a question mark.

25 Ms. Russo then sends an e-mail to Mr. Weisner

Barnett - Kasulis - Direct

4630

1 saying, "Hi, Ray, please see the attached, thanks," and then
2 it appears that that e-mail is forwarded by Mr. Weisner on
3 March 19th, 2012, to Jane Becky. Do you know who that is?

4 A Yes. She's, I believe, is administrative support.

5 Q Are you are carbon copied on this e-mail; is that
6 right?

7 A Yes.

8 Q And it's entitled, "Signed letter MSMB Healthcare
9 S08845." Do you know what S08845 is?

10 A I do. S0 is service order and then the 8845 is the job
11 number.

12 Q Thank you.

13 So if we can turn to the next page of this
14 document?

15 A (Witness complies.)

16 Q What is this document, generally speaking?

17 A This is the engagement letter.

18 Q And date on the letter?

19 A March 16, 2012.

20 Q And the letterhead is VRC letterhead; is that right?

21 A That's right.

22 Q And who is this letter addressed to?

23 A Mr. Shkreli.

24 Q And he's listed as the chief investment officer of
25 MSMB Healthcare LP; is that right?

Barnett - Kasulis - Direct

4631

1 A True, yes.

2 Q The first paragraph reads, "This letter will confirm
3 upon execution your authorization for Valuation Research
4 Corporation, VRC, to provide MSMB Healthcare LC, or the
5 company, with valuation services as outlined below." And
6 then beneath that there is what is called an engagement
7 scope. Is that typical for these types of letters to have a
8 defined engagement scope that's contained in the letter?

9 A Yes.

10 Q And this engagement scope section then goes on to
11 state, "The Company is the owner of certain interests in
12 Retrophin, LLC, a biotechnology company defined as
13 Retrophin. The interests are comprised a Class A common
14 stock, Class B common stock and Series A preferred stock."

15 It goes on the state, "This project will involve
16 the determination by VRC of the fair value of the Class A
17 common stock of Retrophin as of both 12/31/2011 and
18 February 29th, 2011, and, two, Class B common stock of
19 Retrophin as of 12/31/2011 and February 29th, 2012." Can
20 you explain the difference between Class A common stock and
21 Class B common stock?

22 A Yes. So for the LLC agreement, which is what outlines
23 the authorized capital stock of an LLC, limited liability
24 company, it just outlines if there's a series they prefer,
25 there's a Class A common and a Class B common. So the Class

Barnett - Kasulis - Direct

4632

1 B common is actually referred to as incentive units, so
2 these are things that vest. They are awarded to individuals
3 and vest over time. The Class A is just typical common
4 stock as well as defined in the agreement as the Series A
5 preferred. So the Series A preferred is what is actually
6 purchased, so Retrophin capital contribution, and the common
7 stock is typically not purchased, it's just part of the
8 residual claim of equity.

9 THE COURT: And that's under the Class A umbrella
10 for stock?

11 A Well, the preferred, Series A preferred is an
12 individual class and then the common Class A and B, they
13 just have different voting rights and the B is really, you
14 have to vest. It's an incentive unit, but otherwise it's
15 economically the same as Class A, so there's really very
16 economic distinction, it's just that vesting is required on
17 the Class B.

18 BY MS. KASULIS:

19 Q Thank you. And then what I just read, "The purposes of
20 our services is to support for financial reporting
21 requirement." What does that mean?

22 A Yeah, that's -- really outlines what we're hired, you
23 know, the scope of our work here is to -- for financial
24 reporting for audit, financial statements, so with respect
25 to financial statements, there's often fair value

Barnett - Kasulis - Direct

4633

1 assessments and requirements. So to the degree that's
2 needed in completing an audited financial, that's something
3 that we are -- that is the service we're providing.

4 (Continued on next page.)
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Barnett - direct - Kasulis

4634

1 DIRECT EXAMINATION (CONT'D.)

2 BY MS. KASULIS:

3 Q Then right below that it says: "The standard of value
4 will be fair value."

5 A Correct.

6 Q Is that what you're referring to?

7 A Yes.

8 Q And below that it states: "We will utilize the then most
9 recent transaction price of \$20 per share of Series A
10 preferred for the 12/31/2011 valuation date and the then most
11 recent transaction price of \$40 per share of Series A
12 preferred for the February 29th, 2012 valuation date."

13 With respect to those two prices per share, \$20 per
14 share and \$40 per share, where did that pricing come from?

15 A That was provided by MSMB in what's called the
16 capitalization table of the company. So, the capitalization
17 table lists all the individual holders of the securities, the
18 security that they hold and if there was a price paid for
19 them, the price that was paid for the security.

20 Q And then right below that it states: "Our work shall
21 include consideration of the liquidation, distribution and/or
22 voting right differences of the various shares. We will not
23 be independently determining the enterprise value of
24 Retrophin."

25 So, what does that mean, "We will not be

Barnett - direct - Kasulis

4635

1 independently determining the enterprise value of Retrophin"?

2 A It essentially limits the scope of our work directly to
3 the evidence of the price paid for the subject securities, so
4 we're not going and actually saying what is Retrophin worth
5 and then therefore inferring the value of the securities, we
6 are literally looking at the transactions provided to us in
7 the security and working with that as the indicator of value.

8 Q If we go to the next page of this document and then under
9 the Engagement Management section, you're listed there; is
10 that right, Mr. Barnett?

11 A Yes.

12 Q And it lists your qualifications there as senior vice
13 president?

14 A Yes.

15 Q And it also references Mr. Weisner, that last line, of
16 the Engagement Management team?

17 A Correct.

18 Q And if we go below that, the next two sections under
19 Valuation Deliverables, it states: "VRC shall deliver a
20 valuation report with our determination of the fair value of
21 the above securities."

22 And then the delivery time: "We will deliver our
23 value conclusions within one week of our being engaged in
24 writing."

25 Is that sort of a typical amount of time for this

Barnett - direct - Kasulis

4636

1 sort of engagement, one week?

2 A It's on the short side but given that we weren't going to
3 perform an enterprise and in this case /equity value, it was
4 appropriate for the scope that we were being engaged for.

5 Q And if we turn to the next page of this letter.

6 A Yes.

7 Q And just look at the top section first, the fees and
8 charges.

9 A Yes.

10 Q It states there: "Our fee for the services outlined
11 above exclusive of expenses will be \$3,000."

12 Is this amount typical for this sort of work that's
13 being performed in the letter?

14 A It reflects the limited scope nature of the work and
15 would be considered on the low fee -- low end range of a fee
16 of valuation services we would provide.

17 Q And if we could now focus on the next section of this
18 page, the Liabilities and Indemnification section.

19 Will you look at the last paragraph here, the one
20 starting: "VRC will furnish future additional services,"
21 starting about halfway down, the sentence starting: "Our
22 report is intended solely," if we could read that full
23 sentence into the record?

24 A "Our report is intended solely for the benefit of the
25 company and may not be disclosed publicly or made available to

Barnett - direct - Kasulis

4637

1 third parties other than the board of the company and the
2 company's external auditor without the prior written consent
3 of VRC."

4 Q And just to be clear, the company was defined on the
5 first page of this letter as MSMB Healthcare LP; is that
6 right?

7 A Yes.

8 Q And if we turn to the last page of this exhibit, it
9 appears to be signed by Raymond Weisner; is that correct?

10 A Yes.

11 Q Then the bottom part of this signature block, it appears
12 that Martin Shkreli has signed on behalf of MSMB Healthcare LP
13 dated March 19th, 2012; did I read that properly?

14 A Yes.

15 Q Thank you. We can put this document aside.

16 Now, did you receive -- I think you've made some
17 reference to some materials that you used to perform this
18 engagement; can you please describe the materials from MSMB
19 that you received to begin your work on this engagement?

20 A Yes, they were primarily what's called a Private
21 Placement Memorandum and also a couple of different LLC
22 agreements, basically they're the same, they just differed by
23 their date, and the capitalization table I referred to before
24 was provided.

25 Q So, I'm sorry.

Barnett - direct - Kasulis

4638

1 A Yeah, I think that's the primary things.

2 Q So, I'm showing you what's marked for identification as
3 Government Exhibit 127-3, it's behind Tab 3 of your binder.

4 A Okay.

5 Q Do you recognize this document?

6 A I do.

7 Q What is it?

8 A It's an e-mail to me from Ray providing the attachments I
9 was just referring to.

10 MS. KASULIS: The government moves 127-3 into
11 evidence.

12 MR. AGNIFILO: No objection.

13 THE COURT: We receive 127-3.

14 (Government's Exhibit 127-3 so marked in evidence.)

15 Q So, this is the e-mail that you just referenced, the last
16 e-mail in the chain dated March 15th, 2012. It appears that
17 within this e-mail chain, it starts from Jackson Su dated
18 March 13th, 2012 to Mr. Weisner with the title MSMB Healthcare
19 LP Package for Retrophin Investment, and Mr. Su writes:

20 "Ray, Here is the package for Retrophin."

21 And Mr. Su is listed as the Chief Operating Officer
22 of MSMB Capital, do you see that?

23 A I do.

24 Q Okay. So, if we can go up in this e-mail chain, it
25 appears that -- if we can scroll up a little bit, it appears

Barnett - direct - Kasulis

4639

1 that Mr. Weisner then forwards this chain to you, Mr. Barnett;
2 is that correct?

3 A Yes.

4 Q And the title is Need For Assistance with Review of Stock
5 Valuation and then there are a series of attachments here
6 listed here in the attachment sections; is that right?

7 A Yes.

8 Q And that includes, for example, the Retrophin LLC
9 agreement on two separate dates in March 2011 and July 2011,
10 the Retrophin PPM in July of 2011, a Retrophin Excel
11 spreadsheet, it looks like there are two capitalization tables
12 for Retrophin dated March 13th, 2012 and December 31st, 2011,
13 and then a Retrophin LLC balance sheet dated February 29th,
14 2012; is that correct?

15 A Yes.

16 Q And did you review all of these attachments at the time
17 that you performed this engagement?

18 A I did.

19 Q And if I can direct your attention to the page after VRC
20 151, there's actually a little tab in your binder there.

21 A Go ahead.

22 MS. KASULIS: The page itself doesn't have a Bates
23 number, Your Honor, because it was produced as an Excel file.

24 THE COURT: Okay.

25 MS. KASULIS: So it is the page immediately after

Barnett - direct - Kasulis

4640

1 VRC 151 which does have a Bates stamp. Okay. So, if we can
2 zoom in --

3 THE COURT: For the record, can we put the title in
4 the record of this document please.

5 MS. KASULIS: The title of this document is
6 Retrophin LLC Capitalization as of March 13th, 2012.

7 THE COURT: Thank you.

8 Q Is that correct?

9 A Yes, it is.

10 Q Can you just explain how this capitalization table is set
11 up for the jury?

12 A I can. So, it outlines the three classes of stock in
13 Retrophin LLC. We see the Class A common investment unit at
14 the top. It shows you specifically who owns these units and
15 how many are currently owned or held. These are the ones that
16 are outstanding, there may be more authorized but these are
17 the ones that are currently outstanding.

18 Next are the Class B common, you see a few more
19 names. These are typically insiders to Retrophin LLC who have
20 received these as incentive units so they require vesting,
21 much like in any kind of an equity award.

22 And then the third column or the third category is
23 the Series A preferred units and these are the actual shares
24 that are sold and so you receive a capital contribution for
25 the ownership of these shares, it shows you the individual

Barnett - direct - Kasulis

4641

1 that was the investor or the entity as well as the dollar
2 amount and the units.

3 Q When you say "capital contribution," does that mean
4 money?

5 A It means money.

6 Q And if you turn to the next page.

7 A Okay.

8 Q And the title of this document is Retrophin LLC
9 Capitalization as of December 31, 2011. Is this
10 capitalization table set up in the same way as the prior
11 capitalization table that we just reviewed?

12 A Yes.

13 Q And if we can go to the next page of this document, and
14 this is the Retrophin LLC Balance Sheet as of February 29th,
15 2012. Did you use this document as part of your analysis?

16 A We did not. It would be more appropriate perhaps if we
17 were doing an actual enterprise value but we referenced it to
18 see what audited, you know, GAAP assets and liabilities and
19 equity existed and one thing we checked for was whether there
20 was any material long-term debt outstanding and there is not.

21 Q And when you say an "enterprise value," what do you mean
22 by that?

23 A The value of all invested capital in an entity, so that
24 can be debt and equity and in this case there is no meaningful
25 long-term debt outstanding so the enterprise value and the

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4642

1 equity value would merge to be sort of synonymous here.

2 Q So, you were not performing an enterprise valuation for
3 Retrophin; is that correct?

4 A That's correct.

5 Q So, after you received these materials what did you do
6 with them?

7 A Just reviewed them and focused on the materials that were
8 relevant to the work we were performing.

9 Q And were you able to generate any work product?

10 A Yes.

11 Q I'm showing you what's been marked for identification as
12 Government Exhibit 127-5, it's behind Tab 5 of your binder.

13 Do you recognize this document?

14 A I do, this is an e-mail to me -- from me to Jackson Su
15 containing the valuation of Retrophin as of 3/15/2012.

16 Q And when you say a valuation of Retrophin, what do you
17 mean by that?

18 A Well -- it's actually the valuation of the MSMB Capital
19 stock held in Retrophin.

20 MS. KASULIS: The government moves Exhibit 127-5
21 into evidence.

22 MR. AGNIFILO: No objection.

23 THE COURT: All right. We will receive 127-5.

24 (Government's Exhibit 127-5 so marked in evidence.)

25 THE COURT: You said this was the valuation of MSMB

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4643

1 Capital stock or MSMB Healthcare stock?

2 THE WITNESS: MSMB Healthcare and the stock that
3 they held in Retrophin, so there's no valuation of Retrophin,
4 just the capital stock issued by Retrophin held by MSMB
5 Healthcare.

6 THE COURT: Okay. Thank you.

7 THE WITNESS: Yes.

8 Q So, this appears to be an e-mail from yourself to Jackson
9 Su dated March 30th, 2012; is that right?

10 A Yes.

11 Q And this appears to be about a couple weeks after you had
12 received the materials from Mr. Su that we just reviewed?

13 A Correct.

14 Q And the title is March Val Date and there is an
15 attachment listed here, is that right, with the date
16 3/15/2012?

17 A Yes.

18 Q So, if we can go to the next page of this document; so, I
19 know this is going to be a little hard to read so we're going
20 to try to focus but just generally speaking, how long is this
21 document that you prepared?

22 A Well, it's one page.

23 Q And if we could look at the top portion of the document,
24 on the left-hand side it's titled Investment Summary; is that
25 correct?

Barnett - direct - Kasulis

4644

1 A Yes.

2 Q And then underneath it's MSMB Capital Valuation Date of
3 3/15/2012; is that correct?

4 A Yes.

5 Q And then it's Retrophin LLC, private company, and then
6 it's on VRC letterhead. If we could then just step through
7 this first section entitled Business and Transaction Overview.
8 I know there's going to be multiple versions of this so we
9 won't do this for every one of these but if you could for the
10 jury just step through each one of these sections, that would
11 be helpful.

12 A Yes, so this is the more comprehensive view of all the
13 valuation dates that we provided but the first is to identify
14 the subject company, so Retrophin LLC, just a brief blurb
15 about what they do.

16 Q And that's just, if you look at your screen, Mr. Barnett,
17 this is the first section we're talking about, Business and
18 Transaction Overview?

19 A Correct, and specifically then the business and there we
20 talk about when it was formed and that it's completed a
21 financing offering of the Series A preferred units and
22 otherwise authorized and issued both Class A common and Class
23 B common.

24 MS. KASULIS: So, I think what might help, Your
25 Honor, is maybe we can switch to the Elmo and we can maybe

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4645

1 focus a little better. Ms. Smith is going to try to assist
2 me.

3 (Pause.)

4 Q So, it looks like under this Business and Transaction
5 Overview section there are four sections, Business,
6 Transaction, Follow-on Transaction and Recent Events; is that
7 correct?

8 A Yes.

9 Q And the Business and Transaction Overview section, what
10 is that, generally speaking?

11 A It's basically outlining the facts and circumstances of
12 the engagement, so in this case we've defined and introduced
13 what the subject enterprise is, it is Retrophin LLC, and then
14 the two transactions are the Transaction and Follow-on
15 Transaction. We've identified the actual transactions in the
16 securities issued by Retrophin LLC evidenced by the
17 capitalization table on various dates.

18 Q And so, that's the Transaction section right below the
19 Business --

20 A Yes.

21 Q -- Transaction?

22 A Yes, it's basically providing you with specific units
23 that were offered, the actual amount that transacted in terms
24 of number of units and the dollar value at which they
25 transacted, so there's also some aggregate dollar amounts

Barnett - direct - Kasulis

4646

1 presented.

2 Q In this Transaction section what is the price per unit?

3 A Yeah, so there were a couple, the Series A was purchased
4 at two different points in time, one time for \$20 a unit and
5 then a second time at \$40 a unit, still the same security just
6 purchased at a higher price.

7 Q Can you just direct us in this Transaction section as to
8 where \$40 a unit is?

9 A Let's see, I think that would be in the Follow-on
10 Transaction.

11 Q Okay.

12 A Yes, it's in the Follow-on. So, the initial transaction
13 saw only the units placed for \$20 per unit.

14 Q Okay. And the Follow-on Transaction lists the \$40 per
15 unit --

16 A Yes.

17 Q -- pricing?

18 A Yes.

19 Q So, if we read the Follow-on Transaction section, it
20 states: In the first quarter of 2012 an additional 31,025
21 Series A preferred units were sold for \$40 per unit raising
22 1.24 million dollars. This increased the total contributed
23 capital in Retrophin to \$2.1 million which is current as of
24 this valuation date. MSMB Healthcare was the primary investor
25 in the second round, \$40, purchasing 28,500 units for

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4647

1 \$1.4 million; is that correct?

2 A \$1.14 million.

3 Q Sorry, thank you, \$1.14 million.

4 A Yes, that is correct.

5 Q And then under the Recent Events section, what does that
6 section typically include?

7 A Largely it -- well, it says Events, I was going to say
8 events, milestone or valuation inflection points, did anything
9 dramatic happen at this subject company, so this case
10 Retrophin LLC, so just things going on operationally or any
11 kind of changes or transformation in the entity.

12 Q So, it states here in terms of recent events: In
13 February 2012 Retrophin licensed ADARA program from Ligand.
14 And then it states: In exchange for \$1 million up front, \$75
15 million in potential milestone payments and 9 percent
16 royalties.

17 And then it talks about Retrophin would then get
18 various rights and the last two sentences of this section
19 state: "The company can have multiple early and later stage
20 products in the pipelines concurrently, as such the outlook
21 and valuation of its securities is highly event driven."

22 What does that mean?

23 A It just reflects the early stage nature of the company
24 and that its valuation is going to be directly impacted by
25 particular milestone achievements or failures but significant

Barnett - direct - Kasulis

4648

1 developments in its course toward product development.

2 Q In terms of this upper section of this one-page summary
3 entitled Business and Transaction Overview, the Business
4 section, the Transaction section, the Follow-on Transaction
5 and the Recent Events, where do you get this information from
6 that's listed in this upper portion of the summary?

7 A Sure, it largely came from the Private Placement
8 Memorandum, so that's a fairly detailed document really
9 outlining the scope of the business enterprise, its goals and
10 its risks and those kind of things. A lot of the specific
11 detail you see here is directly from the capitalization tables
12 and then the recent events was either probably also -- may not
13 have been in the PPM but it would have been provided by say
14 Jackson or some kind of a document.

15 Q So, all of these sources that you reference, those all
16 come from the client; is that right?

17 A Correct.

18 Q And if we look now on the lower portion of the report on
19 the right side, can you explain this portion titled Retrophin
20 LLC Capitalization Table March 13th, 2012?

21 A Yes, so this is a high level direct summary of the
22 detailed capitalization table just presented by the three
23 different classes of equity, the primary holders so
24 identifying with the focus being on MSMB Healthcare, and you
25 can see really then the focus being the Series A preferred

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4649

1 units because those are the ones that had a transacted value
2 that we list various and just seeking to identify which units
3 MSMB held but also within an aggregate total presentation of
4 the units outstanding. Then you can see the contributing
5 capital, so if there was any money put forward on these
6 securities that's identified, again that is largely present
7 for the Series A preferred units, and then some minor notes
8 there.

9 Q And the minor notes have to do with the price per unit of
10 the purchases?

11 A Well, true, which is not as minor but that's also
12 detailed above but, yes, it just reiterates again actually
13 MSMB's holdings in Series A were 95 percent acquired at the
14 \$40 per unit, 5 percent at the \$20 per unit.

15 Q From where is this information in this section derived?

16 A Again the capitalization table.

17 Q And if we then can look at the next section below that
18 entitled Valuation Considerations and Conclusion Highlights,
19 if we start with the first bullet point there, can you please
20 read that bullet point to the jury.

21 A "This valuation summary does not undertake estimating a
22 current enterprise or total equity value. The facts and
23 circumstances are that the Series A preferred units just
24 transacted in the last six months at \$20 and \$40 per unit
25 represent \$830,000 and \$1.2 million in contributing capital

Barnett - direct - Kasulis

4650

1 respectively. Investors included MSMB Healthcare -- or MSMB
2 Capital which that obviously should be Healthcare LP and
3 several sophisticated individuals with significant industry
4 experience."

5 Q So, your understanding, and we'll get to this, but in
6 subsequent versions of this summary MSMB Capital is changed to
7 MSMB Healthcare?

8 A Correct.

9 Q And then with respect to "several sophisticated
10 individuals with significant industry experience," who is
11 being referred to there?

12 A Just the other line items within the capitalization
13 table.

14 Q So, do you know any of those investors?

15 A I do not.

16 Q If we look at the third bullet point, can you read that
17 first sentence there in the bullet point?

18 A "The operational state," that bullet?

19 Q Yes.

20 A "The operational state of Retrophin and the very recent
21 (less than six months) Series A preferred capitalizations
22 suggest that the company's equity valuation is likely to be
23 equal to the total contributed capital. However, the
24 significant events of the license agreement in February 2012
25 suggest that additional value may be present. \$1 million was

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4651

1 used to acquire this license, half the Series A contributed
2 capital. In addition, 732,000 common B units have been issued
3 at no consideration of which 157,000 invested but may reflect
4 value contribution and additional equity value."

5 Q And then if we could look at the very last bullet point
6 there.

7 A Yes.

8 Q And can you please read that bullet point for the jury?

9 A "MSMB management has indicated that a \$200 million
10 valuation has been seriously discussed by sophisticated third-
11 party institutions as a possible near-term IPO valuation.
12 Such a valuation would create significant economic value to
13 these securities well beyond the current purchase price
14 reflecting our upper bound."

15 Q So, what does that bullet point mean?

16 A Yeah, it's just that in our working with MSMB Healthcare,
17 you know, it was posited to us that there was serious
18 discussions about a near-term IPO, initial public offering,
19 and that the valuation of that was in the \$200 million range
20 and so it would mean that we would -- that is reflective then
21 of our high end of the value range that we provided.

22 Q From whom did you get this \$200 million IPO potential
23 from?

24 A Sure, MSMB Healthcare, the client.

25 Q And did you do any third-party verification of that

Barnett - direct - Kasulis

4652

1 potential \$200 million IPO?

2 A We did not.

3 Q And if we just then look at the left side of this report,
4 if we could just go to the very top just to start with.

5 THE COURT: May I ask a question.

6 MS. KASULIS: Yes.

7 THE COURT: Sir, you said you got the \$200 million
8 IPO information from MSMB Healthcare, do you know who?

9 THE WITNESS: It would be Jackson Su.

10 THE COURT: Thank you.

11 Q And then just at the very top here, so this section is
12 entitled Investment Overview and then MSMB Capital Analyst,
13 who is listed there?

14 A Jackson Su.

15 Q Okay. And then if we go to this section here entitled
16 Security Valuation Contribution and then the per unit value
17 current, per unit value is current?

18 A Yes.

19 Q Can you please explain these two sections?

20 A Yes. So, the top section, the non-yellow section is the
21 aggregate dollar amount in a low, mid and high value range of,
22 and by column, the left column is Series A preferred, the
23 right column is common A, Class A stock, and this is
24 specifically the dollar amount of the securities held by MSMB
25 Healthcare. So, those are the aggregate dollars amounts. We

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4653

1 were provided with a mark or a value estimate by MSMB and
2 that's represented there as the 1.2 million and then --
3 correct -- and then everything in the yellow box is a
4 translation of the aggregate dollar amount that you see
5 divided by the number of units, just straight math, just a
6 straight divide.

7 Q So, can you explain the low, mid and high value ranges?

8 A Yes, so the low, mid and high, the low is reflective of
9 the transaction price of the Series A.

10 Q So, that's how much?

11 A This would either be at the \$20 or \$40 unit value, let's
12 see, the \$40 unit value. You can see that -- no, back under
13 the other capitalization table where I have contributed
14 capital, so the 1.17 million, it's the total investment held
15 by MSMB of which a couple -- 5 percent of the units were
16 purchased at \$20 but 95 percent were purchased at \$40.

17 Q Okay. So, that's the low and middle you have \$20 and
18 \$40?

19 A Yes.

20 Q Is that correct?

21 A That's right.

22 Q Then let's talk about the VRC value high at \$210 per
23 share.

24 A Yes.

25 Q How did you come up with that number?

Barnett - direct - Kasulis

4654

1 A So, that's essentially taking 200 million divided by the
2 fully diluted outstanding units at the time assuming all
3 vesting of the class B common; so, back to the table where
4 we've identified each class in the summary and there's 321,000
5 Class A common outstanding, 731,840 common B units or
6 incentive units outstanding, and then 75,525 Series A. So, if
7 you sum those three numbers and then divide into, you get a
8 little over a million shares; you divide that into 200
9 million, you get \$210 but there's some disaggregation there
10 between the Series A and the Class A common but that's why you
11 see two different values, but that's basically the value.

12 Q So, basically it is total number of shares divided into
13 this 200 million?

14 A Into the 200 million, that's correct.

15 Q Just to be clear, the \$200 million number, where does
16 that come from?

17 A Jackson Su.

18 Q That's the \$200 million potential IPO?

19 A Yeah, the potential IPO.

20 Q And that's from the client?

21 A Correct.

22 Q If we just go a little further up just to explain this
23 \$6,300,000, the VRC high value; can you just explain where
24 that comes from?

25 A Yes, so that would then just be the units at 200 -- it's

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4655

1 what MSMB holds of all of their units, so that would be the
2 common and the Series A preferred. So, all of those units at
3 \$210 approximately.

4 Q So, again, the 6.3 million is derived from that
5 \$200 million IPO potential, is that correct?

6 A Yes.

7 Q Okay, so I think we can put this document aside.

8 Now I'm showing you what's marked for identification
9 as Government Exhibit 127-5, it's behind Tab 5 of your binder.

10 THE CLERK: Is that on the Prosecution?

11 Q 127-6, it's behind tab six of your binder.

12 THE CLERK: Are you using the Elmo?

13 MS. KASULIS: We can use the sanction for this one.

14 Q Do you recognize this document?

15 A Yes.

16 Q What is it?

17 A This is an e-mail from Jackson Su to myself with some
18 requests.

19 MS. KASULIS: The government moves this exhibit into
20 evidence.

21 MR. AGNIFILO: No objection.

22 THE COURT: We receive 127-6.

23 (Government's Exhibit 127-6 so marked in evidence.)

24 Q Now, can you please -- if we go to the very bottom of
25 this e-mail.

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4656

1 A That's in the next page?

2 Q Yes, that's right, if we can go to the next page,
3 the very first e-mail in this chain. Could you please read
4 your e-mail to the jury, it's dated March 27th, 2012, to
5 Mr. Su.

6 A Yes.

7 "Jack, I've put together a summary valuation for
8 your holdings in Retrophin LLC. This summary is based on the
9 information you have provided to us including cap tables
10 December 2011 and March 2011, the LLC agreements, the private
11 placement memorandum June 2011, a balance sheet February 2012
12 and the model as well as our telephone conversations. The
13 upper end of the value range is reflective of a \$200 million
14 near-term IPO, the preferreds and common would effectively be
15 valued the same on a per unit basis at that level of equity
16 value. At 72,525 preferred units, 321,660 common A units and
17 731,840 common B units there would be approximately \$175 per
18 unit not considering any additional units or capital that an
19 IPO may involve. I'm not giving any particular weight to the
20 ranges, just illustrating the potential value range. I feel
21 marking the preferreds at the recent transaction price makes
22 sense though there may be upside already present and I've
23 marked the common at the midpoint of 0 and 20 or \$10 a unit
24 which is reflective of your recent marks. Have a look and we
25 can discuss."

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4657

1 Q And if we go to Mr. Su's response just above that, it is
2 dated March 30th, 2012, Mr. Su writes: "Hi, Rob. I hate to
3 rush you but any chance of receiving a final draft this
4 morning. We want to have something to our administrators
5 later this afternoon."

6 Do you know who he's referring to in terms of
7 administrators?

8 A No.

9 Q And if we go to the next page, the very bottom, you
10 reply: "Okay. I'm just getting on my feet at the office, a
11 bit hectic being gone all week. I'll try to have to you by
12 3:00 p.m. EST, Eastern Standard time."

13 And then it looks like you do, if you go farther up
14 in the chain it looks like you -- and Jackson says, "Thank
15 You" and then farther up it looks like you then attach:
16 "Here's an updated valuation summary for March 15th, 2012,
17 I'll send the other 31 December 2011. Rob."

18 Let's go ahead and look at Mr. Su's response. And
19 Mr. Su responds on March 30th, 2012, to you and he states:
20 "Rob, Please revise MSMB Capital to MSMB Healthcare LP."

21 And so was that the change that you were referencing
22 in the prior investment summary that we reviewed?

23 A That's correct.

24 Q And then: "Analyst to Martin Shkreli."

25 Was that then a change from the Jackson Su listed on

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4658

1 the investment summary to Martin Shkreli?

2 A Yes.

3 Q And then: "Valuation date should be 12/30/2011 and
4 1/31/2012 instead of March 15. I went the wrong direction
5 with dates. Everything else looks good. If possible send
6 final today. Thank you."

7 So, what was your reaction to this changing of the
8 dates?

9 A I don't remember. Nothing major other than now all of a
10 sudden we're kind of going to dates prior to where we were but
11 nothing significant, no significant reaction.

12 Q Okay. Just to take a step back, in total how much time
13 did you spend on this engagement?

14 A The fee which you saw earlier allows for ten billable
15 hours tour, ten what we call financial billable hours for the
16 work and my time was probably no more than say 20, it was in
17 line with what was available for the fee that was provided but
18 I think by the time I went through all the documents and
19 provided the detail in the schedules and, you know, back and
20 forth with e-mails, it was probably a little more than that.

21 Q So, I'm showing you what's been marked for identification
22 as Government Exhibit 127-7, it's behind Tab 6 of your binder.

23 A Tab 6?

24 Q I'm sorry, seven.

25 A Seven, yes.

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4659

1 Q Do you recognize this document?

2 A Yes.

3 Q And what is it?

4 A It is a series of e-mails and with the top e-mail being
5 from myself to Jackson copying Ray Weisner with the valuation
6 summaries for December 30, 2011, and January 31, 2012 as
7 requested.

8 Q So, this is your response to Mr. Su's request in our
9 prior exhibit?

10 A It is.

11 MS. KASULIS: The government moves this exhibit into
12 evidence.

13 MR. AGNIFILO: No objection.

14 THE COURT: We receive 127-7.

15 (Government's Exhibit 127-7 so marked in evidence.)

16 Q So, if we look at the very top of this e-mail, this
17 appears to be a response to Mr. Su at 11:30 p.m. which says:
18 "Jackson, Here's the two valuation summaries with the changes
19 noted. Let me know if I missed something. Thanks, Rob" and
20 there are two attachments there, Retrophin LLC Preferred and
21 Common Valuation Summary, December 30th, 2011, and Retrophin
22 LLC Preferred and Common Valuation summary 31 January 2012.

23 If we could then go to the two attachments and then
24 if we can switch to the Elmo for these two attachments please.
25 So, the first attachment, if we can look at the upper

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4660

1 left-hand corner, and so this investment summary is listed for
2 MSMB Healthcare LP with a valuation date of December 30th,
3 2011; is that right?

4 A Yes.

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7 (Continued on next page.)

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4661

1 DIRECT EXAMINATION (CONTINUED)

2 BY MS. KASULIS:

3 Q And then if you look at the MSMB Healthcare analyst
4 section, has that now been changed to Martin Shkreli?

5 A Yes.

6 Q And if we look at the right side of the valuation
7 summary, does this reflect the Capitalization Tables of
8 December of 2011?

9 A Correct, as of year-end.

10 Q Okay. And then if we look further down in the valuation
11 and considerations section, the first bullet point here, it
12 appears to say that, it appears to have actually changed to be
13 investors included -- still lists investors included MSMB
14 Capital; is that right?

15 A Yes. So that's a typo or oversight in terms of making
16 that change, but you're right.

17 Q Then if we look at the very bottom here, there is no
18 listing about a potential IPO scenario; is that right?

19 A That is right.

20 Q If we look to the left side of the report, can you then
21 please explain here what is going on in terms of the valuation
22 of the stock for MSMB Healthcare?

23 A Yes. Everything here is marked for or valued at the \$20
24 per unit that was paid for the actual Series A preferred. The
25 dollar amount you see under the Series A preferred column is

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4662

1 specific to the shares held by MSMB Healthcare. There is a
2 representation of the value of the Class A common, based again
3 also on the shares outstanding, and then you can see that
4 reflected in the per units amounts below.

5 The common is basically taken at a discount to the
6 preferred. It does have distribution rights and there is a
7 preference afforded to the common, but it's junior to the
8 preferred. And the preferred actually received a 2X
9 liquidation reference. So every dollar invested in the Series
10 A, \$2 will be have to returned to the Series A or any money
11 available to the Class A common. The common is shown at a
12 discount level, and in fact, at this early stage where we've
13 not done an enterprise or equity value, and we're marking the
14 A purely at the transaction price, we show the common could
15 also be worthless.

16 Q If you look at the per unit values, it looks like all of
17 the values you listed there are \$20 per unit; is that right?

18 A That's right.

19 Q And in this scenario there is no \$200 million IPO that is
20 contemplated; is that right?

21 A That's right.

22 Q If we look to the next page, so then here it looks like
23 this valuation date is 1/31/2012; is that right?

24 A Yes.

25 Q If we look under the valuation consideration and

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4663

1 conclusion highlights section, if you go to the right, now the
2 investors included MSMB Healthcare that's been changed now; is
3 that right?

4 A Yes.

5 Q If we look all the way at the bottom of this section, as
6 of this date here is where the \$200 million IPO consideration
7 comes back into play?

8 A Yes.

9 Q And again, you didn't confirm with any third-parties
10 about this potential for a \$200 million IPO?

11 A No.

12 Q If we look to the left side of this report, again we're
13 seeing these per unit values, particularly in the box in
14 yellow, and these high numbers like the \$210 or the 175, those
15 again are being derived from the potential \$200 million IPO at
16 this point in time?

17 A That's correct, the high numbers.

18 Q What is your source of information regarding the
19 \$200 million potential IPO?

20 A It would just be MSMB.

21 Q Thank you. I'm showing you what is marked for
22 identification as Government's Exhibit 127-8, behind tab eight
23 of your binder. Do you recognize this document?

24 A Yes.

25 Q What is it?

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4664

1 A An e-mail from myself to Jackson and copied Ray Weisner,
2 and it is attaching the valuation summary as of March 31,
3 2012, update.

4 MS. KASULIS: Government moves this exhibit into
5 evidence.

6 MR. AGNIFILO: No objection.

7 THE COURT: We receive 127-8.

8 (Government's Exhibit Number 127-8 so marked and
9 received in evidence.)

10 Q We can start on the second page of this exhibit, please.
11 If you look in the middle e-mail here from yourself to Mr. Su.
12 It appears to be that the e-mail, the top e-mail, is the chain
13 that we just reviewed; is that right?

14 A Yes.

15 Q So the rest of the e-mails are in response, or follow
16 from the chain that we just reviewed; is that correct?

17 A Yes.

18 Q Okay. So if we scroll up, if we start on the prior page
19 on the bottom, appears to be an e-mail from Mr. Su dated
20 April 17, 2012, to yourself with the carbon copy to Ray
21 Weisner. Then if we go to the actual e-mail, Mr. Su writes,
22 "Hi Rob. Hope all is well. Hate to bother you with this but
23 I need to trouble you with a date for Retrophin. They keep
24 jumping back and forth on dates but can you put a 3/31/2012
25 date on the report? Also, we'll need your services for this

Barnett - Direct - Kasulis

4665

1 particular investment every quarter end. Just a heads up.

2 I'll send you a formal notice in the first week of each

3 quarter." Do you see that?

4 A Yes.

5 Q Then if we go to your e-mail response on the first page.

6 A Okay.

7 Q You state, "Yes, we can do that. So we have your

8 year-end and 3/31/2012."

9 When you state year-end, is that in reference to the
10 year-ending 2011?

11 A Yes.

12 Q "I actually think that makes a little more sense. Got a
13 number of balls in the air today and tomorrow, but will send
14 you back something back probably today or later today."

15 Why do you say, I actually thinks that makes a
16 little more sense?

17 A I think largely because it's just a 3/31 quarter end, so
18 it's something a little cleaner in that regard, than the 3/15
19 for example. And it's also showing a little bit more
20 investment activity in the Series A preferred, just a little
21 bit more in depth highlighting recent transactions in the
22 stock.

23 Q And so if we scroll up, Mr. Su responds, "Thank you."

24 And then you respond saying, "I think this will do
25 it." You've attached Retrophin LLC valuations summary 31

Barnett - Direct - Kasulis

4666

1 March 2012 updated. And you state, "I think this will do it.
2 I just updated the valuation date from January 31 to March 31.
3 Optically this is preferable because you had a lot of activity
4 in the first quarter 2012 and putting a 1/31/12 date on it
5 limits our visibility into the important developments. So the
6 3/31/2012 is a more suitable date for our purposes. This
7 summary reflects our understanding of all the activity in the
8 first quarter and better supports the valuation than the
9 January 31 date. Thanks, Rob." Did I read that correctly?

10 A Yes.

11 Q So if we go to the attachment. So it appears on the top,
12 left-hand corner of this of attachment the valuation date has
13 been changed to 3/31/2012; is that right?

14 A Yes.

15 Q And can you explain, what, if any, difference there is
16 between this report and the 1/31/2012 valuation that we saw in
17 a prior exhibit, the 127-7?

18 A Yes. The only difference really would be in the summary
19 units outstanding and held, and then the total contributed
20 dollar amount.

21 Q Would it be in this right-hand side here?

22 A Yes, that's correct.

23 Q So those numbers have been updated to reflect changes to
24 the Capitalization Table?

25 A Yes, to the degree that there were. I think we had

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4667

1 basically two Capitalization Tables, but that's correct.

2 Q Okay. Then if we look at the left-hand side again.

3 A Same values.

4 Q Those values are, in terms of the high range, those
5 values are based on the \$200 million potential IPO that had
6 been shared with you by MSMB?

7 A Yes.

8 Q Is it common for the dates on the reports to be changing
9 frequently with clients?

10 A No.

11 Q So what was your reaction to that?

12 A It was one of just supporting the client service that we
13 were providing. But I didn't delve into it too significantly.
14 Largely the valuation approach that we were taking was
15 consistent across all the dates. So I didn't have a
16 significant reaction, but I wouldn't call it usual.

17 Q Okay. So now I'm showing you what is marked for
18 identification as Government's Exhibit 127-9, do you recognize
19 this exhibit?

20 A Yes.

21 Q What is it?

22 A It is an e-mail from me to Varun Agarwal at NAV
23 Consulting copying Jackson Su, attaching our 3/31 valuation
24 summary.

25 MS. KASULIS: The Government moves this exhibit into

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4668

1 evidence.

2 MR. AGNIFILO: No objection.

3 THE COURT: We receive 127-9.

4 (Government's Exhibit Number 127-9 so marked and
5 received in evidence.)

6 BY MS. KASULIS:

7 Q So the date on this e-mail is May 15, 2012; is that
8 correct?

9 A Yes.

10 Q It's from yourself to a Varun Agarwal at
11 NAVConsulting.net with a carbon copy to Jackson Su and with an
12 attachment with the title Retrophin LLC stock valuation as of
13 March 31, 2012 with the attachment of the -- is your
14 understanding that the attachment is the investment summary
15 that was attached to the prior exhibit, Government's Exhibit
16 127-8?

17 A Yes.

18 Q In the body of the e-mail you write, "Varun, Jackson
19 requested that I forward our 3/31 valuation summary. Please
20 find it attached. Thanks, Rob." Do you know who Varun
21 Agarwal is?

22 A No.

23 Q Do you know what NAV Consulting is?

24 A No.

25 THE COURT: Why did you send this?

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4669

1 THE WITNESS: It was at the request of Jackson. And
2 it was identified to our administrators.

3 THE COURT: Thank you.

4 THE WITNESS: So when I say I don't know NAV
5 Consulting, I don't know that firm, that entity.

6 Q Did you have any discussions, phone conversations, with
7 NAV Consulting?

8 A No.

9 Q Do you recall, separate from this e-mail, any other
10 communications with NAV Consulting?

11 A I do not.

12 Q I'm showing you what is marked for identification as
13 Government's Exhibit 127-10. Do you recognize this exhibit?

14 A I do.

15 Q What is it?

16 A This is an e-mail from Jackson Su to myself copying Ray
17 Weisner and Martin.

18 Q And Martin meaning Martin Shkreli?

19 A Yes.

20 MS. KASULIS: The Government is moving this exhibit
21 into evidence.

22 MR. AGNIFILO: No objection.

23 THE COURT: We receive 127-10.

24 (Government's Exhibit Number 27-10 so marked and
25 received in evidence.)

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4670

1 BY MS. KASULIS:

2 Q So if we look at the middle of this page, this appears to
3 be the e-mail that we saw in a prior exhibit from yourself in
4 Exhibit 127-8 from yourself to Jackson Su dated April 17,
5 2012; is that right?

6 A Yes.

7 Q If we look further up in the chain it appears that
8 Jackson is replying to that prior email on June 25, 2012. He
9 is sending it to you with a carbon copy to Ray Weisner and
10 Martin Shkreli. He states, "Hi Rob. Hope you're well. We'd
11 like a valuation for the 5/31/2012 date."

12 Then the next section he entitles update. "We're
13 still in the process of doing a transaction for the whole
14 company. But in the meantime we completed the \$40 round of
15 financing, and started the \$80 recently. It has been mostly
16 MSMB Healthcare LP Capital, so nothing substantial at arm's
17 length thus far. Retrophin is also doing a transaction
18 currently to buy a profitable specialty health care company
19 that will add sales to the company balance sheet. Please let
20 me know if you have questions or would like to discuss any of
21 the items above." What was your understanding of what Mr. Su
22 meant by at arm's length thus far?

23 A Yes, he's referencing in discussion, in speaking with
24 Jackson over the course of all the valuation dates and getting
25 things sent over to him, it was just my comment that at some

Barnett - Direct - Kasulis

4671

1 point just having MSMB Healthcare continue to buy the shares
2 at an elevated share price is not going to be supportive of
3 the limited scope of work that we're doing. So it was just to
4 say, to move away from relying on the Series A transactions,
5 it's going to be needed to see a material outside, new
6 investors into Retrophin as a holder of securities to really
7 continue down this valuation path. So we're just looking for
8 something. We began to raise the arm's length nature of the
9 transactions, and so I think there is a reference here from
10 that kind of a discussion.

11 Q Okay. Then if we look at the next tab, tab 11,
12 Government's Exhibit 127-11.

13 A Okay.

14 Q Do you recognize this document?

15 A I do.

16 Q What is it?

17 A It is an e-mail from Ray to Jane that contains a copy of
18 an e-mail from Jackson to Ray that had copied me already in
19 the engagement letter.

20 MS. KASULIS: The Government moves this exhibit into
21 evidence.

22 MR. AGNIFILO: No objection.

23 THE COURT: We receive 127-11.

24 (Government's Exhibit Number 127-11 so marked and
25 received in evidence.)

Barnett - Direct - Kasulis

4672

1 BY MS. KASULIS:

2 Q So this page, this exhibit, it appears that Jackson Su
3 has sent to Ray Weisner with a carbon copy to you on June 28,
4 2012, entitled engagement letter. Then Mr. Weisner appears to
5 forward that engagement letter to Jane * Becky; is that
6 correct?

7 A Yes.

8 Q With the engagement letter attached?

9 A Yes.

10 Q If we go to the next page of this exhibit. What is the
11 date on this letter?

12 A June 28, 2012.

13 Q Who is it addressed to?

14 A Mr. Martin Shkreli.

15 Q He's listed begin as the Chief Investment Officer of MSMB
16 Healthcare LP?

17 A Yes.

18 Q After the, "Dear Mr. Shkreli," it appears to state, "This
19 letter will confirm upon execution your authorization for
20 Valuation Research Corporation, or VRC, to provide MSMB
21 Healthcare LP defined as the Company with valuation services
22 at outlined below."

23 And then in the engagement scope section it states,
24 "This project will involve the determination by VRC of the
25 range of fair value of the Class A common stock in Series A

Barnett - Direct - Kasulis

4673

1 preferred stock as of both May 31, 2012 and June 30, 2012;" is
2 that correct?

3 A Yes.

4 Q Again, the purpose of this engagement is the same as the
5 prior engagement letter; is that correct? Meaning, the
6 purpose of our services is support for financial reporting
7 requirements?

8 A That's correct.

9 Q Then, a couple lines below that, "We'll utilize the
10 recent transaction price of \$40 per share of Series A
11 preferred in support of the valuation and recently received
12 June 27, 2012 Capitalization Table." With respect to the \$40
13 per share, where is that information coming from?

14 A Again, the Capitalization Table the most recent one that
15 was available.

16 Q Where did you obtain that Capitalization Table from?

17 A MSMB Healthcare.

18 Q Then the next paragraph, the last sentence states, "We
19 will not be independently determining the enterprise value of
20 Retrophin." So what does that mean again?

21 A It just means we are not valuing Retrophin itself.

22 Q If we turn to the third page of this document, upper
23 portion of the fees and charges. What is the fee for these
24 services listed here in this engagement letter?

25 A \$1,600.

Barnett - Direct - Kasulis

4674

1 Q Again, is that a reasonable estimate for the amount of
2 work that would need to be done for this engagement?

3 A Yes, given the very limited scope. Because now you're
4 down to about five or six billable hours for this work.

5 Q Then if we go to the liabilities and indemnification
6 section below that, similar to the same section that we saw on
7 the prior engagement letter. Starting again in the middle of
8 the last paragraph it states, "Our report is intended solely
9 for the benefit of the Company," and again the Company is?

10 A Defined at MSMB Healthcare.

11 Q That's right. "And may not be disclosed publicly or made
12 available to third-parties other than the Board of the company
13 and the companies external auditor without the prior written
14 consent of VRC." Do you see that?

15 A Yes.

16 Q Directing your attention to the next page, this agreement
17 appears to be signed by Mr. Weisner, and Mr. Shkreli on
18 June 28, 2012; is that correct?

19 A Yes.

20 Q I'm showing you what is marked for identification as
21 Government's Exhibit 127-13, it's tab 13 of your binder.

22 A Okay.

23 Q Do you recognize this document?

24 A Yes, I do.

25 Q What is it?

Barnett - Direct - Kasulis

4675

1 A It is an e-mail from myself to Jackson Su copying Ray
2 Weisner, "We've updated the valuation summaries for both
3 May 31 and June 30, 2012."

4 MS. KASULIS: Government moves this exhibit into
5 evidence.

6 MR. AGNIFILO: No objection.

7 THE COURT: We receive 127-13.

8 (Government's Exhibit Number 127-13 so marked and
9 received in evidence.)

10 BY MS. KASULIS:

11 Q So again, this e-mail is dated July 16, 2012. It's from
12 yourself to Mr. Su with a carbon copy to Ray Weisner; is that
13 correct?

14 A Yes.

15 Q The title is Retrophin updated valuation summaries, with
16 two attachments dated May 31, 2012 and June 30, 2012; is that
17 right?

18 A Yes.

19 Q Then you state, "Jackson I drafted the valuation
20 summaries for both May 31 and June 30, 2012. They are
21 attached. I've incorporated the June 30, 2012 cap table and
22 other relevant information provided that update from the
23 March 31, 2012 valuation date. Please have a look and we can
24 discuss tomorrow. Thanks, Rob."

25 If we just go briefly to the two attachments. So

Barnett - Direct - Kasulis

4676

1 the top, left-hand portion of this document, what is the date
2 on the top, left-hand portion of the document?

3 A May 31, 2012.

4 Q And if we just then go to the Retrophin LLC
5 Capitalization Table section dated May 31, 2012, what is the
6 difference, generally speaking, listed there?

7 A It would just be any activity in the Capitalization
8 Table, so an update on the units outstanding or contributing
9 capital.

10 Q If we go to the first bullet point under the valuation
11 considerations and conclusions highlights, that very first
12 sentence reads, "This valuation summary does not undertake
13 estimating a current enterprise or total equity value." With
14 respect to the current enterprise or total equity value, is
15 that with respect to Retrophin?

16 A Correct.

17 Q And if we go to the bottom portion of this section, the
18 section to last bullet point, the very last sentence reads,
19 "Future valuations will consider the diversity of
20 participation in capitalization contributions for more arm's
21 length." What do you mean by that?

22 A It just means that to continue working with these kind of
23 Capitalization Tables you have a shelf life in terms of how
24 long you can hold a valuation just at cost. So the more
25 recent that the transaction occurred, at that price point,

Barnett - Direct - Kasulis

4677

1 you're comfortable that's a representation of fair value. As
2 time drags along, there may be some movement away from that
3 original transaction up or down, just something different. So
4 it's really just a comment that we're seeing the same
5 investors buy the securities at different price points, which
6 is perfectly fine, but we're just looking to see if we want to
7 continue down this particular path of not valuing the entity
8 but just the transactions, more arm's length character would
9 be supportive of the point.

10 Q The bullet point below that states, "MSMB Management had
11 indicated that a \$200 million valuation has been seriously
12 discussed with sophisticated third-party institutions as a
13 possible near-term IPO value. Such a valuation would create a
14 significant economic value to the securities well beyond the
15 current purchase price reflecting up or down." Is this the
16 same \$200 million possible IPO that we saw contemplated in the
17 prior versions of this investment summary?

18 A It is. So these updates are just reflecting no change in
19 that, with the waterfall calculations of the unit value.

20 Q If we look at the left-hand side of the valuation report,
21 we're seeing now the VRC value high at \$215 per share in the
22 per unit values current section. Where does that \$215 per
23 share value come from?

24 A That's a straight waterfall calculation taking the
25 \$200 million headline value, and dividing by the sum total

Barnett - Direct - Kasulis

4678

1 units presented in the summary table there.

2 Q So that's a hypothetical value depending on this
3 potential \$200 million IPO?

4 A That's right. It's not a valuation; it's just a
5 hypothetical calculation per the IPO.

6 Q The same with respect to this section above that, VRC
7 high value. It looks like over \$10 million, the same applies
8 to that number as well? It's a hypothetical valuation based
9 on the \$200 million potential IPO?

10 A Yes.

11 Q If we just go to the next document the investment
12 summary, that date is June 30, 2012; is that right?

13 A Correct.

14 Q What is the difference between, generally speaking, this
15 valuation summary -- excuse me -- investment summary, from the
16 prior investment summary dated about one month before that?

17 A Very little. The concluded values all look the same.
18 The only thing that occurred was there is a note now here that
19 3,125 units were purchased or acquired by MSMB Healthcare at
20 \$80 per unit. Same Series A, now in the portfolio at 20, 40,
21 80 per units.

22 Q If we look to the left-hand side of this exhibit, it
23 looks like the VRC value high for per unit looks like it just
24 dropped by a dollar at \$214 per share. Why is there a dollar
25 difference?

Barnett - Direct - Kasulis

4679

1 A There might be slight additional share count in June
2 versus May, that's a waterfall calculation.

3 Q When you say waterfall calculation, what do you mean?

4 A \$200 million divided by the fully diluted outstanding
5 units.

6 Q The \$200 million, again, that's the hypothetical
7 \$200 million potential IPO?

8 A Correct.

9 Q Did you verify with any third-parties at this point in
10 time the potential for a \$200 million IPO for Retrophin?

11 A I did not.

12 Q Do you recall working on this engagement any more after
13 these investment summaries?

14 A I do not. I think this was the end.

15 Q Just to be clear, what do these investment summaries
16 represent, Mr. Barnett?

17 A Just a summary of the transactions that occurred, the
18 subject company that's issuing the securities and performing
19 the transactions, a high-level summary of the classes of stock
20 from a capitalization perspective, some commentary on our
21 valuations, considerations and conclusions, then a range of
22 values from low to mid to high.

23 Q The range of values with respect to the MSMB Healthcare's
24 shares?

25 A Their own shares in the preferred and common.

Barnett - Direct - Kasulis

4680

1 Q In Retrophin?

2 A Correct.

3 Q Again, when you created these investment summaries where
4 did you get that information from?

5 A Everything was provided by MSMB.

6 Q Did you provide any additional services to -- strike
7 that.

8 Did you provide any services to Retrophin?

9 A No.

10 Q If you value a private company, what would that entail?

11 A It's an entirely different operation. You would work
12 obviously with the company management to some degree. You
13 would gain audited financials that are both historical, all
14 historical, at least in the recent time frame. Then you would
15 ask for prospective financial information, meaning forecasts.
16 Then work with various approaches. But they would all be
17 largely what we call income approaches or market approaches.
18 A real analysis where you're looking into the performance,
19 financial performance, of the company.

20 Q Would that be a more time-consuming process?

21 A Yes; and therefore, more fee as well.

22 Q Did you have any contact with any MSMB Healthcare
23 investors?

24 A No.

25 MS. KASULIS: One moment, Your Honor. No further

Barnett - Cross - Agnifilo

4681

1 questions.

2 THE COURT: Why don't we give the jurors a
3 mid-morning break at this time. We will come back in ten
4 minutes.

5 Thank you for your ongoing attention. Please don't
6 talk about the case.

7 Sir, can you step down as well.

8 (Jury exits the courtroom.)

9 (Whereupon, the witness steps down.)

10 (Whereupon, a recess was taken at 11:10 a.m.)

11 (Jury enters the courtroom.)

12 (Whereupon, the witness resumes the stand.)

13 THE COURT: All the jurors are present. Have a seat
14 everybody.

15 Mr. Agnifilo, if would you like to cross-examine
16 Mr. Barnett.

17 MR. AGNIFILO: Yes, Judge.

18 THE COURT: All right. Thank you.

19 CROSS EXAMINATION

20 BY MR. AGNIFILO:

21 Q Good morning, Mr. Barnett.

22 A Good morning.

23 Q My name is Marc Agnifilo. I represent Martin Shkreli.

24 I'm going to ask you questions for about five or ten minutes
25 and we'll get you on your way.

Barnett - Cross - Agnifilo

4682

1 I'm going to start with something that's already in
2 evidence as 127-13, it's one of these investment summaries.
3 I'm going to use the Elmo to show it to Mr. Barnett.

4 MS. KASULIS: Tab 13.

5 A Yes.

6 Q On the left side here, where it says security valuations,
7 it says VRC low value, do you see that entry there?

8 A Yes.

9 Q And in within the range of the low value you have a low
10 of zero dollars, right?

11 A Yes.

12 Q And then a high, within the low range, of \$1.17 million?

13 A Yes.

14 Q Then the next one is VRC mid value, do you see that?

15 A Yes.

16 Q So in a sense you're giving three different ranges,
17 right?

18 A That's correct.

19 Q All right. Why the wide discrepancy in ranges, if I
20 could ask?

21 A Yes. So in this case the low and the mid are the same
22 because it's literally reflecting the price paid for the
23 security, so strong evidence of that.

24 Then the high scenario relates to a successful IPO.

25 Q Right, okay. Let's talk about that for a second. I did

Barnett - Cross - Agnifilo

4683

1 the yellow, it's not on the original. It's kind a small I
2 hope everyone can see it.

3 So the IPO language is on the bottom, right?

4 A Yes.

5 Q And no one is saying that this IPO is going to happen.

6 A Correct.

7 Q It's speculative, true?

8 A That's right.

9 Q And it's being written here as something that's
10 speculative; fair to say?

11 A Fair to say.

12 Q Okay. So what it says is, "MSMB Management has indicated
13 that a \$200 million valuation has been seriously discussed by
14 sophisticated third-party institutions as a possible near term
15 IPO valuation," correct?

16 A Correct.

17 Q This is not reflecting that this is a done deal in any
18 way, shape or form, right?

19 A Correct.

20 Q This is not indicating that sophisticated investors have
21 made a commitment of some sort to do this, correct?

22 A Correct.

23 Q This is just being written down as something that could
24 possibly happen, correct?

25 A Correct.

Barnett - Cross - Agnifilo

4684

1 Q And you're writing it down as such?

2 A Correct.

3 Q When you go on to say, "Such a valuation would create
4 significant economic value to the securities, well beyond the
5 current purchase price reflecting our upper bound," right?

6 A That's right.

7 Q The upper bound that we're talking about, I'll go back to
8 the Elmo, of between \$10,245,250, and \$4,950,000, you're
9 saying is based on the language we just read about this
10 speculative IPO, correct?

11 A That's correct.

12 Q Because in a sense it can't be ruled out, right?

13 A Agreed.

14 Q And so since it is a possibility it's being reflected in
15 your chart as that upper value, right?

16 A That's correct.

17 Q Okay. But of the three values, the VRC low value the VRC
18 mid value and the VRC high value, you're not even expressing a
19 prediction on which of the three is the most likely?

20 A That is also correct.

21 Q Okay. So you're just giving three values, a low one, a
22 middle one, a high one without saying any of the three is more
23 likely than the other two.

24 A Correct.

25 Q I think part of what you talked about on your direct

Barnett - Cross - Agnifilo

4685

1 examination is the last sale principal, right?

2 A Yes.

3 Q Just tell the jury what that is.

4 A It's just, the strongest evidence of a private illiquid
5 security is the most recently transacted price.

6 Q So now we've been talked about illiquid securities.
7 Illiquid securities where there is not a wide-active market,
8 correct?

9 A Correct.

10 Q Okay. So when we're talking about illiquid securities,
11 securities that are not traded very often, it's very
12 important, and maybe the most important thing, correct me if
13 I'm wrong, to see what the last price paid for the security?

14 A That is correct. Within a window of time, that is the
15 strongest indicator of that.

16 Q I think you said on direct examination, at a certain
17 point so much time passes the last price paid is not as
18 relevant as might be otherwise?

19 A Correct.

20 Q Time element aside, the last price paid for the security
21 is a very, very significant factor in valuing an illiquid
22 security; fair to say?

23 A Fair to say.

24 Q Now I think you also said on direct examination that many
25 of the securities transactions we're talking about regarding

Barnett - Cross - Agnifilo

4686

1 Retrophin stock were with MSMB Healthcare, correct?

2 A Yes.

3 Q You said those are valued differently because they are
4 not really arm's length transactions; fair to say?

5 A No, I took them at their face value. And I'm comfortable
6 being arm's length. It was when we got into the series
7 valuation date extensions, and the new evidence and
8 capitalization was by ongoing purchases, that you become a
9 little less reliant or ideally you're looking for new arm's
10 length character.

11 Q Fair to say if there were third-party transactions,
12 meaning other external investors, how would that be relevant,
13 if at all, to your valuation?

14 A It would become very relevant. Because at that point we
15 move away from just a Series A initial C capitalization, to
16 where now we're getting to what we presumed a Series B or
17 Series A-1, new class of stock. You can really work with that
18 round to imply what the value, total equity of the company is.
19 They usually negotiate that on a pre- or post-money basis. It
20 would be quite significant.

21 Q If Retrophin stock was purchased by an entity other than
22 MSMB Healthcare, that would be a significant factor in your
23 valuation?

24 A It would, depending upon the amount of dollars, the
25 timing of it, and the terms of the security that they are

Barnett - Cross - Agnifilo

4687

1 buying.

2 Q Okay. And I think you said in your direct examination
3 you never actually spoke with Mr. Shkreli in terms of getting
4 information from the client in this particular case?

5 A Correct.

6 Q Your point of contact was Jackson Su, correct?

7 A Correct.

8 Q And did Jackson Su tell you, for instance, that someone
9 named Steve Richardson spent \$10,000 on Retrophin stock at \$40
10 a share? Did you get that; only if you did or didn't.

11 A Don't recall.

12 Q Okay. And were you told that someone named Ed Sullivan
13 bought Retrophin at \$40 a share?

14 A No. In other words, the source of the information that
15 was all in the Capitalization Table.

16 Q Okay.

17 A Nothing verbal.

18 Q Understood. Do you recall if in addition at one point
19 you outlined certain documents that you had gotten from MSMB,
20 correct?

21 A Yes.

22 Q And I think you said it was, it was -- let me make sure I
23 get the exhibit numbers so we know what we're talking about --
24 it was the series of documents that were part of Government's
25 Exhibit 127-3.

Barnett - Cross - Agnifilo

4688

1 A Correct, yes, there it is.

2 Q And I think you said that there was at least two
3 Capitalization Tables and some other documents, right?

4 A Correct.

5 Q Do you remember getting certain models sent to you
6 discounted cash flow models, does that ring a bell at all?

7 A Yes. So the Retrophin.xlsx file, that's the model file.

8 Q What were those models?

9 A I didn't look at them in depth. The scope of valuation
10 was not to do an enterprise or equity value, so there is some
11 contents there, but I don't fully recall it. It was not used.

12 Q All right. These models can take several forms, correct?

13 A Sure.

14 Q And do you remember -- I think, I'm not sure if you
15 talked about it on direct, what does the term "income-based
16 approach valuation" mean to you?

17 A Looking at the future cash flows that would flow to a
18 security. So it's looking at the income that would be
19 available to a certain security.

20 Q Is that similar to the discounted cash flow? Is that the
21 same concept?

22 A Same concept.

23 Q Tell the jury basically what that is.

24 A So you're taking future cash flows over a period of time,
25 and you're discounting them to a present value equivalent.

Barnett - Cross - Agnifilo

4689

1 You're estimating value as of today. So some value today,
2 contingent upon the occurrence of future revenues and earnings
3 discounted to a point in time today. Then you know a value,
4 in this case, of whatever it is that is receiving all these
5 cash flows, so a company in this case. Then would you know
6 the value of the company times zero.

7 Q Do you recall among the materials you received were these
8 discounted cash flows in regard to certain specific drug
9 products that Retrophin had at the time?

10 A I do not recall.

11 Q You don't recall models that basically predicted into the
12 future, here is the amount of money we think we might get from
13 these drugs in the future, from some years in the future?

14 A There was, that was present. But my level of involvement
15 with that was none.

16 Q Correct me if I'm wrong, that information was unnecessary
17 for the type of valuation you were making; fair to say?

18 A That's exactly right.

19 Q Okay. Because that's actually quite in depth
20 information?

21 A That's correct.

22 Q Okay. And so this in depth information about the value
23 of these drugs on a going forward basis, was something you
24 didn't need to do the valuations we've been talking about here
25 today?

Barnett - Cross - Agnifilo

4690

1 A That's correct.

2 Q Do you have any reason to know what Retrophin's value is
3 today?

4 A I'm aware that it's a publicly-traded stock. I don't
5 know it's value today.

6 MR. AGNIFILO: One second, sir.

7 I want to thank you for your time. I have nothing
8 else.

9 MS. KASULIS: Nothing further.

10 THE COURT: Thank you, sir. You're excused. Have a
11 safe trip back.

12 (Whereupon, the witness was excused.)

13 MS. SMITH: Before the Government calls the next
14 witness we want to read a stipulation.

15 THE COURT: All right. Thank you.

16 The Government is going to read a stipulation, so
17 please pay attention thank you.

18 MS. SMITH: So this is a stipulation that's been
19 marked Government's Exhibit 806.

20 It reads, "It is hereby stipulated and agreed by an
21 between the undersigned parties that.

22 "1. NAV Consulting Inc. Served as the fund
23 administrator for MSMB Healthcare Management LP between
24 March 11, 2011 and June 14, 2012. NAV did not serve as the
25 fund administrator for MSMB Capital Management LP, nor did it

Barnett - Cross - Agnifilo

4691

1 perform any services for MSMB Capital Management LP.

2 "2. Government Exhibits 126-2, 126-3, 126-17 are
3 true and accurate copies of the NAV records and are admissible
4 in evidence at trial.

5 (Continued on next page.)

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Mohan - Smith - Direct

4692

1 MS. SMITH: Three: This stipulation marked
2 Government's 806 is admissible in evidence at trial and it's
3 dated July 10th and it's signed by the parties.

4 THE COURT: Thank you.

5 MS. SMITH: And then -- Your Honor, we're going to
6 call the next witness who is Chandra Mohan from NAV
7 Templeton.

8 THE COURT: Thank you.

9 Good morning. Step up, please.

10 C H A N D R A M O H A N S I N G H M E H E T A ,

11 called as a witness having been
12 first duly sworn/affirmed, was examined and
13 testified as follows:

14 THE COURTROOM DEPUTY: Please state and spell your
15 full name for the record.

16 THE WITNESS: My full name is Chandra Mohan Singh
17 Meheta.

18 THE COURT: Will you spell that, please.

19 THE WITNESS: C-H-A-N-D-R-A, M-O-H-A-N, S-I-N-G-H,
20 M-E-H-E-T-A.

21 THE COURT: Thank you, please proceed.

22 DIRECT EXAMINATION

23 BY MS. SMITH:

24 Q Where do you live, Mr. Mohan?

25 A I'm from Chicago.

Mohan - Smith - Direct

4693

1 Q Where are you employed?

2 A I work for NAV Consulting.

3 Q What is NAV Consulting?

4 A NAV Consulting is hedge fund administration company and
5 we provide fund administration assistance to clients.

6 Q How long have you been worked at NAV Consulting?

7 A It's been ten years now.

8 Q What is your position at NAV Consulting?

9 A Actually I'm the account manager there.

10 Q And when you served -- when NAV Consulting serves as
11 the administrator for hedge funds is this a responsibility
12 of NAV to create performance reports for the hedge fund?

13 A Yes, that's true. We provide them the performance
14 services.

15 Q And where did the information for the performance
16 reports come from?

17 A Initially the creation of performance parts come from
18 the client and from broker and then we do the reconciliation
19 and produce the performance numbers.

20 Q How is an administrator different from an auditor of a
21 fund?

22 A Actually hedge fund administrator they do all the
23 comps, they process everything, all the data number and then
24 generate the performance number by auditors, they actually
25 do their audit on the numbers, they verify that everything

Mohan - Smith - Direct

4694

1 is done according to the accounting principles.

2 Q And does NAV communicate with its clients by e-mail?

3 A Yes, we do.

4 Q Did NAV Consulting receive the *subpoena* in connection
5 with this case for records related to a client called
6 MSMB Healthcare?

7 A Yes, we received that.

8 Q And did NAV Consulting provide records in response to
9 that *subpoena*?

10 A Yes, they did.

11 Q I'm going to ask you to look at the binder in front of
12 you and specifically the documents with the red flag. And
13 those are documents that are marked for identification as
14 Government Exhibit 126-1, 126-5, 126-14, 126-20, 126-21,
15 126-22, 126-23, 126-24, 126-25, 126-26, 126-27, 126-28,
16 126-29, 126-31, 126-32, and 126-33.

17 MR. AGNIFILO: Can I speak --

18 THE COURT: Yes.

19 (Pause in proceedings.)

20 MR. AGNIFILO: Your Honor, the only objection I
21 have is to -32 on hearsay grounds. May we be heard very
22 briefly?

23 THE COURT: All right. So brief sidebar on
24 126-32.

25 MR. AGNIFILO: Yes.

Sidebar Conference

4695

1 (The following occurred at sidebar.)

2 THE COURT: Okay.

3 MR. AGNIFILO: All right. Judge, my only
4 objection to that list is to 32, and I object because I
5 really think when Allison used that statement here really is
6 only relevant to offer for the truth. And I don't know
7 that -- I think she was hearsay. It's a prior
8 out-of-statement being offered for the truth. There's no
9 indication that Allison was Martin's agent or that she's
10 authorized to speak for him on this purpose.

11 THE COURT: Well, she is his assistant and I
12 think they --

13 MR. AGNIFILO: Well, I don't think that by itself
14 is -- at least allows another person to make hearsay
15 statements. The rule is, the way I understand it, the
16 person has to be specifically authorized to speak on this
17 matter. And I don't know that we have that.

18 MR. MR. BRAFMAN: She telling him that she
19 doesn't. She says that she doesn't deal with it at all.

20 MS. SMITH: So there are other e-mails, for
21 example Government Exhibit 126-31 where Mr. Shkreli is
22 directing her to provide certain information. And it's
23 within the scope of her employment as executive assistant.
24 And so because she's been directed on certain occasions to
25 provide certain information, in this case, they sent it both

Sidebar Conference

4696

1 to her and to Mr. Shkreli and that was for her response.

2 So I think that this is a response within the
3 scope of her employment at MSMB Capital, I suppose at that
4 point. And also, you know, within kind of completing this
5 information within the other exhibits we've marked.

6 THE COURT: So if I understand, she in her
7 capacity as an assistant at Martin's direction, is
8 transmitting different documents back and forth to NAV, and
9 then NAV said to her, Look, we want to know whether we can
10 get certain documents including proof of invoices. And she
11 responds, I don't deal with this fund at all. Martin would
12 be your best contact. So basically she is saying that, If
13 you want these backup, talk to Martin.

14 Is that it?

15 MR. AGNIFILO: Well, I guess my concern --

16 THE COURT: And then as an assistant where she has
17 previously been directed to transmit, she is saying here
18 that Martin should be the person to provide.

19 Am I understanding that correctly?

20 MR. AGNIFILO: Right, right.

21 THE COURT: So you think it is hearsay because?

22 MR. AGNIFILO: I don't think that -- listen, I
23 don't think that she's automatically -- I'm assuming that
24 with the exception is that she is an agent of Shkreli, not
25 that she's a co-conspirator.

Sidebar Conference

4697

1 MS. SMITH: No, it's within the scope of her
2 employment for Mr. Shkreli as his assistant.

3 MR. AGNIFILO: But she's saying it isn't. And
4 she's saying it's not. I don't deal with this stock. So I
5 don't know how you can have both. And so she's an agent
6 dealing with this and that. And there's no such thing as
7 being an agent generally. It's being an agent in terms of
8 dealing with a specific issue as she's saying she doesn't
9 deal with the issue.

10 MS. SMITH: Well, okay. So it's a statement made
11 by the party's agent or employee on the matter within the
12 scope of that relationship. So she's responding as his
13 executive assistant.

14 MS. KASULIS: As the executive assistant.

15 MR. AGNIFILO: Can I see the document for a
16 second?

17 THE COURT: Watch the reporter.

18 MR. AGNIFILO: Sorry.

19 Here you go, Judge.

20 THE COURT: Right here.

21 MS. SMITH: So she's not responding as a friend or
22 something else. It's within the scope of --

23 THE COURT: MSMB Capital.

24 MR. AGNIFILO: And I'm focusing on C. It was made
25 by a person whom the parties authorized to make a statement

Sidebar Conference

4698

1 on the subject.

2 MS. SMITH: And we're focusing on D, which was
3 made by the party's agent or employee on a matter within the
4 scope of the relationship involved within the -- so that's
5 801D(2)(d).

6 MR. AGNIFILO: All right. But she's saying -- my
7 concern is she's say on the one hand, I don't deal with this
8 fund. So I think she's taking herself out of C and D.

9 MS. SMITH: But she's responding as his assistant.
10 She's not responding as a friend or on a personal
11 relationship. She wouldn't be on this e-mail at all if she
12 was not an assistant, and she's providing that response.

13 MR. AGNIFILO: I don't think -- I -- I understand
14 the point. I don't -- I think because she's saying that she
15 doesn't deal with this fund at all, she's not within the
16 scope of C and D.

17 THE COURT: Well, okay. I respectfully
18 disagree --

19 MR. AGNIFILO: Okay.

20 THE COURT: -- because I think that what has
21 happened here is as his assistant, she transmitted the
22 information to NAV, and when NAV requests backup for certain
23 information, she says, I don't deal with this fund. It
24 doesn't mean that she's not transmitting information in the
25 scope of her employment. Basically she's directing him to

Sidebar Conference

4699

1 Mr. Shkreli.

2 So I mean, she is authorized as Mr. Shkreli's
3 assistant to transmit and to make statements about
4 information that may be needed, but she does not necessarily
5 have the ability to provide, but she does have the ability
6 to refer NAV to Mr. Shkreli. That is the way --

7 MR. AGNIFILO: Okay.

8 THE COURT: -- I see it.

9 MR. AGNIFILO: That's fine, Judge.

10 THE COURT: All right. I think under 801D(2)(d).

11 MR. AGNIFILO: Thank you. Thank you, Judge.

12 THE COURT: All right.

13 (Continued on next page.)

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Mohan - Smith - Direct

4700

1 (In open court. Sidebar ends.)

2 THE COURT: The Court will receive in evidence
3 Government Exhibits 126-1-5, -14 and then -20 through -29,
4 and then 126-31 -- 32 and -33.

5 (Government's Exhibit Numbers 126-1 through 126-5,
6 126-14, 126-20 through 126-29, 126-31 through 126-32 and
7 126-33 so marked and received in evidence.)

8 BY MS. SMITH:

9 Q And, Mr. Mohan, if we can start with the Government
10 Exhibit 126-2 which is behind Tab 2 of your binder. And
11 is -- is this an engagement letter from NAV Consulting?

12 A Yes, it's an engagement letter.

13 Q What is the date of the letter?

14 A It is March 11th, 2011.

15 Q And then it's addressed to MSMB Capital Management LP
16 and MSMB Healthcare LP; is that right?

17 A Yes, that is right.

18 Q And if we can turn to Page 4 of the document. And just
19 focus on the section of ex Paragraph 9 and this paragraph
20 reads, "We are not being engaged to perform and will not
21 perform any audit, review or other attestation services
22 concerning any financial statements or other information of
23 the fund or manager. Accordingly, we will not express any
24 opinion on any fund financial statement, nor will we perform
25 any services related to the fund's system of internal

Mohan - Smith - Direct

4701

1 controls. We have no duties to report any information to
2 the fund regarding its system of internal controls,
3 including but not limited to any significant deficiencies or
4 material weaknesses.

5 You agree not to use our name, NAV Consulting
6 without our prior written consent. Notwithstanding the
7 foregoing, we understand that certain of our work may be
8 provided to your members provided that any such work is
9 clearly marked unaudited."

10 Did I read that correctly?

11 A Yes.

12 BY MS. SMITH:

13 Q And then if we can just look at the last page of the
14 letter and focus on the bottom section. And was this signed
15 by NAV Consulting?

16 A Yes, it is signed.

17 Q And then on behalf of MSMB Capital and MSMB Healthcare
18 is it signed by Martin Shkreli?

19 A Yes; that is correct.

20 Q If we can turn to Government Exhibit 126-3 in evidence
21 which is Tab 5 of your binder. And is this a letter from
22 NAV Consulting?

23 A Yes.

24 Q And what is the date?

25 A March 24, 2011.

Mohan - Smith - Direct

4702

1 Q And it is addressed to MSMB Capital Management LP and
2 then the first two paragraphs read, "Martin, as we mentioned
3 on our call earlier this week, NAV Consulting has not to
4 date received any information according for our records for
5 the if initiation of services to MSMB Capital Management LP
6 we have previously been retained for. NAV Consulting, Inc.,
7 hereby terminates this relationship with MSMB Capital
8 Management LP effective Thursday March 24th, 2011. Please
9 note that at no time were we in possession of any
10 information required to perform the administrator function
11 and as a result, our firm was is at no point administrator
12 to this fund. We should therefore not be named as a service
13 provider to the if fund or the investment manager or any
14 related entity in any offering memorandum, marketing
15 material, or any other information about the fund or any
16 related entity."

17 Did I read that correctly?

18 A Yes.

19 Q And then lastly I would like to direct your attention
20 to Government Exhibit 126-17, which is Tab 30 of your
21 binder. And is this also a letter from NAV Consulting,
22 Incorporated?

23 A Yes.

24 Q And what is the date?

25 A June 14th, 2012.

Mohan - Smith - Direct

4703

1 Q And it is addressed to MSMB Consumer, MSMB Healthcare
2 and MSMB Isotope; is that right?

3 A That's right.

4 Q And then the letter reads, "Dear Martin, As we told you
5 yesterday we will be terminating our relationship with the
6 above three funds effective immediately. We will be sending
7 out a notice to your investors that NAV Consulting,
8 Incorporated, will no longer be the fund administrator for
9 these three funds. We have completed the financial
10 statements and related records through March 31st, 2012. If
11 you would like us to complete funding accounting for April
12 and May, please pay the attached invoices."

13 Did I read that correctly?

14 A Yes.

15 Q Mr. Mohan, did you have any personal knowledge of or
16 serve as the account manager for NAV Consulting with
17 MSMB Healthcare?

18 A I did not. I don't have any function with them.

19 Q And have you ever had any contact with the defendant
20 Martin Shkreli?

21 A No.

22 MS. SMITH: Your Honor, we have no further
23 questions.

24 THE COURT: Would you like to cross?

25 MR. AGNIFILO: One, second, Your Honor.

Mohan - Agnifilo - Cross

4704

1 THE COURT: All right.

2 (Pause in proceedings.)

3 MR. AGNIFILO: Very brief.

4 THE COURT: Sure.

5 CROSS-EXAMINATION

6 BY MR. AGNIFILO:

7 Q Good morning, sir.

8 A Good morning.

9 Q I'm going to ask you some questions, not too many, and
10 then I will get you on your way. My name is Marc Agnifilo,
11 I represent Martin Shkreli.

12 Now, you did not work on this particular account,
13 correct?

14 A Yes, that's correct.

15 Q Okay. Do you know that NAV sent out performance
16 reports on behalf of MSMB Healthcare, do you know that?

17 A Actually I don't know, I have no information about the
18 account fund activity.

19 Q Okay. Now, do you know who Varun Agarwal is?

20 A Yes, I know him.

21 Q Okay. Does this person still work at NAV?

22 A Yes. He works in -- now he works in our back office
23 that is in India.

24 Q So he still works in your same company?

25 A Yes.

Mohan - Agnifilo - Cross

4705

1 Q Okay. And do you know if Mr. Agarwal was the person
2 who was the contact person for MSMB?

3 A Actually I'm not sure, but it seems to be so, but I'm
4 not sure if he was the account manager on the fund or not.

5 Q Okay. And I think on direct examination you read parts
6 of a couple of letters from Nav Gupta, right?

7 A Sure.

8 Q Who is Nav Gupta?

9 A He is the president and CEO of NAV Consulting.

10 Q And he's still with the company?

11 A Yes, he is.

12 Q So he and Mr. Agarwal are still with NAV?

13 A Yes.

14 Q And you said you -- based on some of the e-mails you
15 believe that Mr. Agarwal was the contact person for MSMB?

16 A Yes.

17 MS. SMITH: Objection.

18 THE COURT: Overruled.

19 MS. SMITH: He's leading.

20 THE COURT: Overruled.

21 BY MR. AGNIFILO:

22 Q Was your answer yes, I couldn't quite hear you.

23 A Yes.

24 Q Okay.

25 All right. Now how large is NAV, the company?

Mohan - Agnifilo - Cross

4706

1 A Actually in our Chicago firm we have around 30 people
2 here and in our back office there are 500 people working
3 there.

4 Q Okay. And Mr. Agarwal works out of the Chicago office?

5 A He used to work here around, I think, three or four
6 years ago.

7 Q And do you know where he's working now?

8 A He's working in our back office, NAV back office.

9 MR. AGNIFILO: Your Honor, can you give me one
10 second, I have to call up...

11 (Pause in proceedings.)

12 MR. BRAFMAN: Your Honor, we may need a short
13 break to find certain exhibits. Could we ask that we take
14 an early lunch break or just give us a couple minutes.

15 THE COURT: All right. Well, I suppose we could
16 take a short break.

17 MR. BRAFMAN: Okay.

18 THE COURT: Unless the jurors would like to have
19 their lunch now.

20 JURORS: No.

21 THE COURT: Good. This is a hardworking group.

22 All right. We will take a short break. Thank
23 you. Please do not talk about the case.

24 (Recess taken.)

25 (Jury exits.)

Mohan - Agnifilo - Cross

4707

1 (The following matters occurred outside the
2 presence of the jury.)

3 THE COURT: Sir, if you want to step down to take
4 a break and stretch your legs.

5 (Recess taken.)

6 MR. BRAFMAN: Your Honor, on an unrelated issue.

7 (Pause in proceedings.)

8 THE COURT: I'm sorry, Mr. Brafman, what?

9 MR. BRAFMAN: I'm sorry. On the issue you raised
10 earlier, I misunderstood. The answer is yes, we will be
11 requesting a reliance on counsel charge. So I withdrew what
12 I said earlier this morning. When the Court asked me, my
13 mind was elsewhere, I apologize.

14 THE COURT: Okay. Thank you.

15 MR. BRAFMAN: Thank you.

16 (Pause in proceedings.)

17 (Jury enters.)

18 (Jury present.)

19 THE COURT: All jurors are present.

20 Please have a seat, everybody.

21 Are you ready to proceed, sir?

22 MR. AGNIFILO: Yes, Your Honor.

23 THE COURT: All right. Thank you.

24 BY AGNIFILO:

25 Q Sir, I'm going to ask you to look at something that's

Mohan - Agnifilo - Cross

4708

1 already been admitted into evidence, it's Government's
2 Exhibit 83-1.

3 This is Government's Exhibit 83-1 and the part
4 that I'm focusing on is the e-mail from Investor Relations
5 at NAV Consulting with someone named Rich Coker. Do you see
6 that e-mail?

7 A Yes.

8 Q Okay. And are you familiar with the fact that
9 NAV Consulting sometimes will send e-mails to individual
10 investors?

11 A Yes, they do sometimes.

12 Q And does this appear to be what's happening here?

13 A Yes.

14 Q This is an e-mail from your company NAV Consulting,
15 right?

16 A Yes.

17 Q And it talks an attachment, "Please see attached
18 statement for the month of February 2012," and this is part
19 of the same exhibit and I'll put that exhibit in front of
20 you now.

21 MSMB Healthcare LP care of MSMB Healthcare
22 investors. The same name Richard and Barbara Coker. Do you
23 see that there?

24 A Yes.

25 Q And at the bottom it talks about that this is an NAV

Mohan - Agnifilo - Cross

4709

1 Consulting statement, correct?

2 A It seems so.

3 Q Does it look -- does it look familiar as an NAV

4 Consulting statement?

5 A Yes, this seems familiar.

6 Q Okay.

7 All right. And you've seen these before, correct?

8 A Yeah, I'm familiar with that statement.

9 Q I'm sorry, I missed the last part.

10 A I'm familiar with that NAV Consulting statements.

11 Q All right.

12 A The form of the statement.

13 Q Now, there are different entries here, correct? It
14 says, "trade income realized and unrealized."

15 Do you see that there?

16 A Yes.

17 Q What does that refer to?

18 A That's in proportion categorize whatever the -- whether
19 it's in position, the portfolio is in the position to the
20 gain and loss to selling the stocks.

21 Q All right.

22 A The realized and unrealized.

23 Q And where does NAV get that information from?

24 A Actually we get it both from client and from the broker
25 bank and the media.

Mohan - Agnifilo - Cross

4710

1 Q So you get information from the broker, correct?

2 A Yes.

3 Q All right. And then the next entry is trading income
4 private positions. Do you see that entry?

5 A Yes.

6 Q And is that information provided by the brokers as
7 well?

8 A I'm not sure in this case. In this MSMB case, but in
9 general, on these positions, those are not held by brokers.
10 We receive those independently either from the client or
11 from the underlying investors.

12 Q Okay. You get it from the client for underlying
13 investors?

14 A Yes.

15 Q Okay. So fair to say some of the information on the
16 statement is from the client and some of the information on
17 the statement is from a source other than the client,
18 correct?

19 MS. SMITH: Objection, Your Honor.

20 THE COURT: Sustained. Rephrase.

21 MR. AGNIFILO: Yeah. I'll ask a more specific
22 question.

23 THE COURT: Sir, can you put the microphone
24 closer. Yeah, thank you.

25 BY MR. AGNIFILO:

Mohan - Agnifilo - Cross

4711

1 Q When NAV has an engagement, they have access to the
2 underlying documents related to the account, correct?

3 A I'm sorry, can you say that over your question.
4 Underlying document?

5 Q You get a password and you, through the password, can
6 access underlying documents of the particular investor's
7 account, correct?

8 MS. SMITH: Objection, Your Honor, underlying
9 documents.

10 MR. AGNIFILO: And I couldn't hear.

11 THE COURT: She's objecting to the use of
12 underlying document.

13 MR. AGNIFILO: Okay.

14 BY MR. AGNIFILO:

15 Q All right. Let me ask a more specific question. On
16 the bottom it says, "Breakdown of ending balance," and it
17 says, "Cash at banks."

18 Do you see that?

19 A Yes.

20 Q All right. You get the bank account records, correct?

21 A Yes.

22 Q You get the bank account records from the bank, right?

23 A Yes.

24 Q All right. So that's not from the client, correct?

25 A Yes, that's correct.

Mohan - Agnifilo - Cross

4712

1 Q Now, some of the other entries here. It says,
2 "Interest expense." Do you see I'm moving up now. Interest
3 expense is maybe the fifth entry down in that first list of
4 items. Do you see that there?

5 A Yes.

6 Q And where does that information come from?

7 A That might be interest in particular stock, particular
8 bond or a -- or stocks.

9 Q And where would that information come from?

10 MS. SMITH: Objection to this particular
11 statement.

12 THE COURT: Do you mean generally.

13 BY MR. AGNIFILO:

14 Q Do you know generally where these things come from?

15 A Generally, yes. We receive all information either from
16 the client file or from the broker file. And we receive
17 this information either from the client file or from the
18 broker file.

19 Q Okay. So now when you say the broker file, tell the
20 jury what you mean by the broker file.

21 A The broker file is generally we are the client of
22 brokers to which clients are client should have a brokerage
23 account in order to trade and we receive all the offers by
24 that particular client of the broker. If there is a monthly
25 client at the end of the month we receive that statement.

Mohan - Agnifilo - Cross

4713

1 Q And the broker is not MSMB Healthcare, correct?

2 A No, that's correct.

3 Q The broker is a third party, correct?

4 A Yes.

5 Q Okay. So part of the information that you get is from
6 this third-party broker, correct?

7 A Yes.

8 Q And you also in addition to getting third-party broker
9 information, you get information from the banks in regard to
10 this bank account information, correct?

11 A That's correct.

12 THE COURT: May I just ask a question?

13 MR. AGNIFILO: Of course, Judge.

14 THE COURT: About the broker file and the bank.

15 Information, is that the broker information
16 regarding the fund, MSMB Healthcare, or is it the broker
17 file regarding the individual investor?

18 THE WITNESS: No, the broker file they got in the
19 fund only, not the investor.

20 THE COURT: And is that true also for the bank
21 statement?

22 THE WITNESS: Yes.

23 THE COURT: For the fund not --

24 THE WITNESS: For the fund, yes.

25 THE COURT: Thank you.

Mohan - Agnifilo - Cross

4714

1 BY MR. AGNIFILO:

2 Q So you get the bank statements from the fund's bank,
3 correct?

4 A Yes.

5 Q Okay. So, in other words, if the fund is banking at
6 Chase you get records from Chase?

7 A Yes.

8 Q Okay.

9 And if the -- the fund has a broker, interactive
10 brokers, you get information from interactive brokers?

11 A Yes.

12 Q Okay.

13 And fair to say that MSMB -- that NAV sent out --
14 this is -- you don't dispute this is a NAV statement,
15 correct?

16 A It seems so, but I'm not confident because that might
17 be a very old statement. I'm familiar with the newer one
18 where our name the there.

19 Q But you see your -- let me -- let me zoom in.

20 Do you see it says NAV Consulting on the bottom?

21 A Yes.

22 Q All right. I want to show you another thing and you
23 tell me if you are familiar with it.

24 This is -- this is Government's 91.2. I want to
25 look at the format of this statement. Do you see on the

Mohan - Agnifilo - Cross

4715

1 bottom right, do you see NAV Consulting, correct?

2 A Yes.

3 Q All right. Are you familiar with this statement's
4 format?

5 A Yes. This seems like an investor statement.

6 Q Okay. And this is particular instance it goes to
7 someone named David Geller. Do you see that?

8 A Yes.

9 Q And this is an investor statement for the month ending
10 September 30th, 2011, correct?

11 A That's correct.

12 Q All right. You have no reason to doubt that NAV sent
13 these statements out to David Geller, correct?

14 A Yes.

15 Q Okay. What you're saying is you didn't work on any of
16 these particular accounts, correct?

17 A Yes, that's right.

18 Q So you don't have personal knowledge one way or the
19 other as to what NAV was doing in regard to Mr. Coker and
20 Mr. Geller, correct?

21 A Yes.

22 Q But you --

23 A I --

24 Q Go ahead.

25 A Yeah, I don't know much about that, yeah.

Mohan - Agnifilo - Cross

4716

1 Q Right, okay. But you do recognize this, you said, as a
2 NAV statement, correct?

3 A Yes, that is correct. These are NAV statements.

4 Q And NAV -- the job of NAV Consulting is to put together
5 accurate information, correct?

6 A Yes.

7 Q From different sources, right?

8 A Yes.

9 Q And -- and put this information from these different
10 sources into a statement, correct?

11 A Yes.

12 Q And as you said before, to send that statement to the
13 investor directly, correct?

14 A Yes. That other kind of stuff, yes.

15 Q Are you involved in evaluating hedge funds?

16 A No.

17 Q No? Do you know anything about how hedge funds are
18 valued?

19 A No. I know about that, but I'm not actually involved
20 in the valuation of them, but I know about the fund, the
21 valuation of hedge funds, how do you run the portfolio.

22 Q Right. And you understood that MSMB Healthcare is a
23 hedge fund, correct?

24 A Yes.

25 Q And a hedge fund like MSMB Healthcare is not valued by

Mohan - Agnifilo - Cross

4717

1 just the amount of money in the bank account, correct?

2 MS. SMITH: Objection, Your Honor, beyond the
3 scope of direct.

4 THE COURT: Sustained.

5 MR. AGNIFILO: Can we approach, Judge.

6 (Continued on next page.)
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Sidebar Conference

4718

1 (The following occurred at side bar.)

2 MR. AGNIFILO: I think the problem is, Judge,
3 they're putting in a lot of documents through this witness,
4 but they're -- yes. It is beyond. They didn't ask about
5 his valuation, no two ways about it.

6 MR. MR. BRAFMAN: We'll make our witness so he
7 doesn't have to come back from wherever he came from.

8 MS. SMITH: He has no person knowledge of this
9 account. We can ask his generally, but he doesn't know in
10 terms of the input into his account how it was valued or
11 anything like that.

12 And you guys wanted us to stipulate to the
13 documents for authentication so we had to bring somebody.
14 Mr. Agarwal's in India. He cannot be brought here on a
15 moment's notice, and so we have a custodian. That we -- you
16 know, we did not ask him to interpret or anything about the
17 actual statements that are in front of him. So, I mean, to
18 any -- any cross on this point would have to be qualified
19 that he has no personal knowledge of how this particular
20 fund was valued.

21 MR. MR. BRAFMAN: Yeah, I think --

22 MS. SMITH: And so any information input other
23 than he doesn't know what the inputs were.

24 MR. MR. BRAFMAN: But his ability to authenticate
25 the documents is not questioned. That's why he was brought

Sidebar Conference

4719

1 here. So he has the ability to authenticate this is a real
2 document on behalf of MSMB, I think he's fair game for that.

3 MS. SMITH: He did that. And, in fact, he doesn't
4 actually know because it doesn't have the NAV Bates Stamp on
5 the document.

6 MR. MR. BRAFMAN: No, the one bail does.

7 MS. SMITH: It just has the footer, but he doesn't
8 actually --

9 MR. MR. BRAFMAN: You introduced it.

10 MS. SMITH: Yes, but not through NAV.

11 MR. MR. BRAFMAN: No, I understand that. But
12 there's no to it authentication. There's challenges to its
13 accuracy, but there's not challenge --

14 MS. SMITH: That's right.

15 MR. MR. BRAFMAN: -- to its authentication.

16 MS. SMITH: But anything about the entry of that
17 document is beyond the scope of his knowledge.

18 MR. MR. BRAFMAN: It's not beyond the scope of his
19 knowledge. It's beyond the scope of his knowledge as to
20 this particular statement. But we can certainly ask him as
21 a general matter when he does these calculations how do they
22 do that.

23 MS. SMITH: Well, I thought you've already asked
24 about the --

25 MR. MR. BRAFMAN: Well, I think you can ask is

Sidebar Conference

4720

1 there items defined? I mean, what does that mean? How do
2 you do that?

3 MS. KASULIS: But he doesn't now how they did it.

4 MR. MR. BRAFMAN: No, I think he does. If he
5 doesn't know, he'll say he doesn't know.

6 MS. SMITH: But this particular account, he
7 doesn't know --

8 THE COURT: The question was asked very generally:
9 How does NAV gather information? Where do they gather
10 information from for preparing investor statements? But
11 there was not -- my understanding is you asked him to give
12 particular or any particular investor statement involving
13 MSMB Healthcare investors.

14 MR. MR. BRAFMAN: But there are general terms on
15 the statement that he's familiar with that appear on all of
16 those investor statements, not just the ones for this
17 account, and I think he can opine on what that's supposed to
18 mean. That's all.

19 MS. SMITH: It's not an opinion, but if he knows
20 what that --

21 MR. MR. BRAFMAN: Correct, but he'll know.

22 MS. SMITH: Okay. Well, I would just object that
23 we can --

24 MR. MR. BRAFMAN: As a general matter.

25 MR. AGNIFILO: Okay. All right. All right.

Sidebar Conference

4721

1 THE COURT: If I understand, he is just here to
2 authenticate that these are NAV documents?

3 MS. SMITH: Yes.

4 THE COURT: All right. So with regard to this
5 other series of documents, he is either going to say that it
6 looks familiar or it doesn't --

7 MR. MR. BRAFMAN: Judge --

8 THE COURT: -- right? He has already testified.

9 MR. MR. BRAFMAN: On direct examination, they
10 didn't show him the real NAV documents that are at the heart
11 of some of the witnesses in this case. They showed him a
12 termination letter, and it suggested they didn't do anything
13 for this case. And the NAV investor statements that we're
14 now showing him are something that he can identify as a real
15 investor statement, and he's familiar with the general type
16 of statement and the fact that all they did was bring him in
17 here to authenticate the termination letter, doesn't
18 eliminate our cross because that's the reason we brought him
19 here because we didn't want to stipulate. We wanted a live
20 NAV person.

21 THE COURT: But there are multiple documents in
22 that exhibit, correct?

23 MS. SMITH: Yes.

24 THE COURT: Which I unfortunately got delivered
25 Saturday --

Sidebar Conference

4722

1 MR. MR. BRAFMAN: They came in through Geller and
2 they come in through Kocher and it's in evidence.

3 THE COURT: Those were sent to the investor.

4 MR. MR. BRAFMAN: Correct.

5 THE COURT: But as to, you know, no one's saying
6 they are not real, but they are saying that the investors
7 did not know when they got thee e-mails necessarily how they
8 were prepared with regard to their own investor's statement.

9 MR. MR. BRAFMAN: Judge, the impression left with
10 the jury from the direction examination was that NAV was
11 retained and then they were terminated. They didn't go
12 through any of the NAV investment statements, which are I in
13 evidence, which they put in through Geller, through Kocher
14 and others implying that they were fake -- or implying --
15 no --

16 MS. SMITH: No.

17 MR. MR. BRAFMAN: -- implying that they were real,
18 but not that they didn't accurately reflect the money in the
19 account. And now he's here and I want to show him these
20 exhibits and ask him to at least identify them as what they
21 appear to be NAV statements.

22 MS. KASULIS: She as done.

23 MR. MR. BRAFMAN: Where has been done as to one,
24 and I think there are general questions that are within his
25 range of knowledge that he can testify to, not as to this

Sidebar Conference

4723

1 specific Mr. Geller.

2 THE COURT: I think, then, can you just
3 distinguish when you are talking generally and that you are
4 not asking him specifically what the source is, because he
5 said for example the bank account billing could come either
6 from the client, i.e., MSMB, or from the bank account of the
7 fund itself indirectly from the bank. So -- so I think it
8 is just important to be clear when you are asking him --

9 MS. SMITH: Right. And he doesn't now because he
10 was -- you know, we were very clear that he specifically
11 says that --

12 MR. AGNIFILO: Right, right.

13 MS. SMITH: So, you know, we just need to be clear
14 that whatever you're asking him about, he doesn't know what
15 the inputs were, and he doesn't know the exact process.

16 MR. AGNIFILO: I will ask him general questions.

17 MR. MR. BRAFMAN: Okay. But he's more than a
18 custodian. He's done this for ten years. He's not someone
19 who's in the office and mails them whose identifying it as a
20 business record.

21 MS. SMITH: Well, that's who they sent as a
22 custodian. I mean, I didn't pick out who they had available
23 on one day's notice.

24 MR. MR. BRAFMAN: Okay. All right.

25 MR. AGNIFILO: All right. Fine.

Mohan - Agnifilo - Cross

4724

1 (In open court, sidebar ends.)

2 (Pause in proceedings.)

3 BY MR. AGNIFILO:

4 Q Sir, still talking about the NAV report moving where we
5 left off, at the bottom it says rate of return 11.02 percent
6 MTV, right; do you see that there?

7 A Yes.

8 Q What does that mean?

9 A It means that this fund has a quality background of one
10 percent during this month, what is mentioned --

11 MS. SMITH: Objection, Your Honor, again as to
12 this fund. What does the rate of return mean generally?

13 BY MR. AGNIFILO:

14 Q How great a return?

15 A Just put it on this on the gain and loses which fund
16 performance during the month and on the basis of whatever
17 the activity fund has.

18 Q And this is a calculation that NAV engaged in, correct?

19 A Correct.

20 Q All right. And NAV engages in this calculation in
21 order to be accurate, correct?

22 A Correct.

23 Q All right. And NAV is in the business of being
24 accurate in the regard to the numbers that it reports,
25 correct?

Mohan - Agnifilo - Cross

4725

1 A Yes, that's correct.

2 Q Okay. Including the rate of return and the other items
3 here on this investor statement, correct?

4 A Yes.

5 MS. SMITH: Again, Your Honor, this is --

6 THE COURT: I think we did discuss this whether we
7 are asking the witness generally NAV's practice or with
8 regard to --

9 MR. AGNIFILO: I'll rephrase.

10 MS. SMITH: And move to strike the last answer.

11 MR. AGNIFILO: All right. I'll rephrase.

12 THE COURT: All right. The jury should disregard
13 the last answer regarding testimony about this particular
14 statement which is Government Exhibit 91-2.

15 BY MR. AGNIFILO:

16 Q As a general matter, NAV is in the business of
17 providing accurate financial data?

18 A Correct, yes.

19 Q Okay. And as a general matter, NAV is in the business
20 of calculating a rate of return on investments, correct?

21 A Yes.

22 Q And as a general matter, NAV does that in an accurate
23 fashion, correct?

24 A Yes.

25 Q Now, we just looked at a statement for David Geller for

Mohan - Agnifilo - Cross

4726

1 September 30, 2011, correct?

2 A Yes.

3 Q All right. Government's Exhibit 91-3 in evidence, this
4 is the statement for David Geller for October 31st, 2011,
5 correct?

6 A Yes.

7 Q All right. And you agree with me that this is a
8 statement from NAV based on the footer, here, correct?

9 A Yes.

10 Q Okay. And you also -- this is Government Exhibit 91-5.
11 You have a statement from concerning David Geller. Now, you
12 said that this was in a form that you -- you don't
13 recognize, but you don't dispute that this is an NAV report,
14 correct?

15 A This is a form of NAV.

16 Q This isn't a form out of NAV?

17 A Yes.

18 Q Okay. And you see NAV referenced on the bottom,
19 correct?

20 A Yes.

21 Q All right. And this is also a report concerning David
22 Geller, correct?

23 A Yes.

24 Q And Government's 91-6, similar report for David Geller,
25 correct?

Mohan - Agnifilo - Cross

4727

1 A Yes.

2 (Continued on next page.)

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Mohan - cross - Agnifilo

4728

1 CROSS-EXAMINATION (CONT'D.)

2 BY MR. AGNIFILO:

3 Q Right.

4 And there's reference to NAV at the bottom here,
5 correct, it says:

6 Fund invests significant portion of capital in
7 affiliated entities and valuation of some of these entities is
8 not verified by NAV Consulting, Inc."

9 Correct?

10 A Yes.

11 Q And you said you do recognize this as a report of NAV
12 Consulting, correct?

13 A It seems so.

14 Q And you don't know because you didn't work on the MSMB
15 account whether or not NAV sent out multiple reports for
16 different people that were clients of MSMB Healthcare,
17 correct?

18 A Yes, I don't know about that.

19 (Pause in the proceedings.)

20 MR. AGNIFILO: So, thank you for your
21 time.

22 THE WITNESS: Thank you.

23 THE COURT: Redirect?

24 MS. SMITH: Just very briefly, Your Honor.

25

Mohan - redirect - Smith

4729

1 REDIRECT EXAMINATION

2 BY MS. SMITH:

3 Q Mr. Mohan, on cross Mr. Agnifilo asked you about Varun
4 Agarwal and you said he worked in the back office?

5 A Yes, now he work in the back office.

6 Q So, he's currently working in the back office for NAV
7 Consulting?

8 A Yes.

9 Q Is that back office located in India?

10 A Yes.

11 MS. SMITH: Thank you, Your Honor, no further
12 questions.

13 THE COURT: All right, sir, you are excused. Thank
14 you. Have a safe trip back to Chicago.

15 (Witness steps down.)

16 THE COURT: Is the government prepared to call
17 another witness?

18 MS. KASULIS: Your Honor, the next witness would be
19 our case agent but we do have those couple evidentiary issues
20 to work out so perhaps we could take our lunch break.

21 THE COURT: We will give the jurors our lunch break
22 now.

23 Thank you for your ongoing attention. Please don't
24 discuss the case. We will come back and retrieve you in about
25 one hour, maybe a little bit more than that. It will be about

Proceedings

4730

1 an hour and 15 minutes.

2 (Jury leaves courtroom.)

3 THE COURT: Did you want to speak amongst yourselves
4 or did you want to have me resolve something?

5 MS. KASULIS: Speak amongst ourselves first.

6 THE COURT: Thank you. Please call me if you need
7 my input but I'd be happy not to hear from you.

8 MS. KASULIS: We'd be happy not to bother you.

9 THE COURT: Okay, thank you.

10 (Time noted: 12:40 p.m.)

11 (Luncheon recess taken.)

12 (Continued on next page.)

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Proceedings

4731

1 A F T E R N O O N S E S S I O N

2 (The following takes place out of the presence of
3 the jury.)

4 THE COURT: All right. I've given a very quick
5 review to these multiple exhibits. I'm assuming what I've
6 been handed are exhibits in dispute. There are also some
7 exhibits with just yellow tabs on them, I'm not sure what
8 that --

9 MS. SMITH: So, the yellow tabs are the ones in
10 dispute.

11 THE COURT: Oh, okay.

12 MS. SMITH: They're eight.

13 THE COURT: So, why don't we just start at the
14 beginning but would somebody first please invite me, are these
15 exhibits that were exchanged starting yesterday?

16 MS. SMITH: They were exchanged on Friday.

17 THE COURT: Friday, okay. All right. And the
18 defense is objecting. So, let's start with Government's
19 proposed Exhibit 353.

20 MR. AGNIFILO: Yes, Judge, my concern with 353, it
21 is essentially a fairly heated argument -- well, it's Kevin
22 Mulleady essentially railing on Mr. Shkreli, making
23 accusations that I think are prejudicial and especially in a
24 fraud case saying that, how dare you lie to me about
25 everything. There's reference to I guess a certain person's

1 picture here that I think is very prejudicial and obviously
2 has no place at the trial. And I just don't see any exception
3 to this particular statement. It's obviously not a
4 co-conspirator statement because they couldn't be more at
5 odds. It's obviously not the statement of an agent because
6 it's pretty much the polar opposite of that and it is really
7 just Kevin Mulleady expressing tremendous frustration with
8 Mr. Shkreli and making accusatory factual statements that I
9 think should not be admitted as part of this trial without the
10 ability to cross-examine Mr. Mulleady. So, that's 353.

11 THE COURT: All right. I'll hear from the
12 government.

13 MS. SMITH: Your Honor, so for Kevin Mulleady, again
14 we think this is clear evidence of him as a co-conspirator and
15 I think you actually have to look at this in connection with
16 Government Exhibit 356. So, some of what he says here, for
17 example: 100 positions is a lie. 30 percent? How many funds
18 you blowing up. And then also at the bottom you have: 100
19 positions, your positions are never big.

20 So, it goes to his knowledge that this argument that
21 the fund has all of these positions and is an active fund at
22 this point and that the returns are 30 percent are not true.

23 And then if you look at Government Exhibit 356 --

24 THE COURT: Which actually postdates this by two
25 months.

1 MS. SMITH: Yes.

2 THE COURT: So, how is it that he's referring in
3 June to a document that doesn't exist until August 29?

4 MS. SMITH: That's the point. The way they're
5 pitching the fund to people is it has 100 positions and you
6 can see he does it again in September but in June he knows
7 it's not true and he's including it in a presentation for MSMB
8 Healthcare afterwards and so this knowledge by the
9 co-conspirator of the fact that the fund is not the way it's
10 being pitched to investors and we think that that's what this
11 e-mail clearly shows.

12 We are happy to redact the reference to the picture
13 that's in here to the extent that that's inflammatory. There
14 is also some language which we're happy to redact but that is
15 the reason why we included this document.

16 THE COURT: What's difficult about this e-mail is it
17 also looks like he's sending it to himself. It's not clear
18 who he actually sent it to.

19 MS. SMITH: That's true but it comes from him and it
20 shows his knowledge that these statements that are coming from
21 Mr. Shkreli and then that are included in pitches to investors
22 are not true.

23 MR. AGNIFILO: Your Honor, I'd also point out it is
24 an e-mail he sent to himself at 2:08 a.m., I don't know what
25 condition Kevin Mulleady was in at 2:08 a.m. and we don't have

1 the ability to cross-examine him and this is just a rant and I
2 just don't think it has any probative value and it is horribly
3 prejudicial.

4 MS. SMITH: Like I said, to the extent there's more
5 prejudicial language in this, we're happy to redact that. It
6 is really the language about equity funds, lies, 100 positions
7 is a lie, 30 percent, how many funds you blowing up, and at
8 the bottom, you have 100 positions, your positions are never
9 big. So, those are the pieces that we think are directly
10 relevant and evidence of his knowledge and we'll be happy to
11 redact basically the rest of it, frankly.

12 MR. AGNIFILO: But even the characterization, how
13 many funds are you blowing up, this is not the kind of
14 evidence of a fact like that that should play any role in this
15 trial, a 2:08 a.m. e-mail from Kevin Mulleady that we don't
16 even know Martin got, certainly he didn't respond to, it's
17 just him railing for whatever state of mind he was in at the
18 time, we just don't know. I just don't think there's any
19 value -- it's a derogatory, mean spirited e-mail and we don't
20 know exactly why he's sending it.

21 THE COURT: It's being offered for the truth I
22 think.

23 MS. SMITH: Yes, it is, it is being offered as a
24 co-conspirator and they have challenged him as a
25 co-conspirator a number of times and it shows his knowledge.

1 "Blowing up" is the same language that Caroline Stewart used
2 in the e-mail that's already in evidence and there's another
3 e-mail that they're challenging that also uses the language
4 "blowing up." So, it goes to what, you know, what he
5 understands that to mean as well.

6 THE COURT: Do you have any reason to believe that
7 this just isn't like a memo to file where he's just writing
8 notes to himself and just ranting to feel better at 2:00 in
9 the morning? I mean it's hard to know without sort of the
10 back and forth to the recipient. I'm afraid that it is
11 somewhat speculative to assume that this is something that
12 he's referring to in the context of anything having to do with
13 Mr. Shkreli or MSMB.

14 MS. SMITH: The subject line says: For Martin. And
15 the 100 positions language is then in the pitch book on
16 average, you know, that he puts together and sends out to
17 investors, as is the 30 percent return number.

18 MR. AGNIFILO: We're forced to speculate about a lot
19 of things and all we know is he's just railing on him at
20 2:08 in the morning and we don't even know that he actually
21 sent it, we don't know if these are musings to himself, we
22 don't know anything about it because he hasn't testified and
23 we just have -- we're stuck with very prejudicial language
24 that really doesn't advance the ball at this trial I submit at
25 all.

1 MS. SMITH: Your Honor, the argument we've heard
2 from defense is that Kevin Mulleady was not part of the
3 conspiracy, had no idea that the information he was providing
4 was false. This is direct evidence in connection, again, with
5 the Caroline Stewart e-mails that he did in fact know and then
6 continued to work there and sent out the very information that
7 he's calling lies in this document.

8 THE COURT: So, it is not really being offered for
9 the truth of the statements but rather to show knowledge of
10 someone who the government contends is a co-conspirator?

11 MS. SMITH: Yes.

12 MR. AGNIFILO: But, Judge, we can't separate -- the
13 language itself is horribly prejudicial and there's no
14 relevance to it in any way, shape or form, it's purely
15 prejudicial. I mean it's nothing other than him just ranting,
16 you know, we don't know to who, we don't know why, we don't
17 know if he's sending it, we don't know if Martin received it
18 at 2:08 in the morning. It is just, in my opinion, the worst
19 kind of evidence, it's pure prejudice and no probative value
20 whatsoever and we're forced to speculate about these things
21 which we shouldn't have to do with something that's this
22 prejudicial on its face.

23 MS. SMITH: Your Honor, I think those arguments go
24 to weight and I don't think it is any more prejudicial than
25 the Caroline Stewart document that is already in evidence and

1 then the one we've also marked as Government Exhibit 354.

2 MR. AGNIFILO: I don't believe it is in evidence, I
3 believe it is subject to connection to Mr. Kevin Mulleady
4 being found as a co-conspirator.

5 MS. SMITH: This is what we're doing here.

6 THE COURT: I think it is probative to the extent it
7 does show certain knowledge on Mr. Mulleady's part or at least
8 a belief; whether or not it is a true belief or whether or not
9 he is actually correctly believing these things is not really
10 the issue, it's his state of mind and to the extent he's been
11 challenged as a co-conspirator, I think to the extent it shows
12 certain knowledge on his part, it should be admissible but I
13 would, for example, on this e-mail starting with that
14 sentence: Is there a purpose, that should come out; dinner
15 after Sharlee (ph), that should come out; costing us bus
16 should come out.

17 If you're offended by the obscenities, we can take
18 out some of that.

19 MR. AGNIFILO: It's not so much the obscenities.

20 THE COURT: Okay. This is the other thing, I know
21 that it's been in the trial that Mr. Mulleady rather than
22 Mr. Shkreli approached certain friends and family like
23 Mr. Rosen -- I'm sorry, it was Michael Lavelle who is a cousin
24 and there was --

25 MS. SMITH: Mr. Kocher.

1 THE COURT: Kocher came through Mulleady. And so
2 the question is whether he knew as an alleged co-conspirator
3 that certain statements that were being proffered in the PPMs
4 were not true and it goes to his state of mind, it's not
5 really for the truth, but I do agree there's some inflammatory
6 language in here and so the last three lines of this e-mail
7 should come out I think starting: We it feels like you, etc.,
8 and then absolutely lie, that should come out, the line just
9 before that.

10 MS. SMITH: Right.

11 THE COURT: So, I would take out much of this.

12 MS. SMITH: If Your Honor wants to mark that up --

13 THE COURT: I could mark it, yes.

14 MS. SMITH: -- then we'll take it.

15 MR. AGNIFILO: I think the line, Judge, where he
16 says: How dare you lie to me about everything, I don't know
17 how that shows his knowledge. It shows, if anything, that
18 he's claiming in whatever form this is that he didn't know.

19 THE COURT: Expense and city stock options, I'm not
20 sure that's related to anything here. I think it could have
21 to do with maybe his compensation but I just don't know, I
22 think it should come out.

23 MS. SMITH: Okay.

24 THE COURT: I think the equity in funds statement
25 should stay just because, again, it has to do with I think the

1 funds at issue here and his stake in them.

2 The next line, more jobs, I think that should -- I'm
3 not quite sure what is being discussed up to the point of --

4 MS. SMITH: 100 positions.

5 THE COURT: Neo p [ph] wtf? That should come out I
6 think. I don't know what that is.

7 MS. SMITH: Then I think --

8 THE COURT: To the extent the government wants to
9 tie this next statement about 100 positions and 30 percent,
10 it's linked directly to the PPM, you're going to --

11 MS. KASULIS: The PowerPoint.

12 THE COURT: The PowerPoint, sorry, the statement:
13 This is my friends and family; again, I think it is directly
14 relevant to his role in soliciting investors.

15 I think the next definition of insanity line should
16 come out. I think it's just really a rhetorical argumentative
17 question. The next line I think also because it's just not
18 clear what he's referring to and then everything below that
19 should come out.

20 MS. SMITH: Other than the last line that says: You
21 have 100 positions, after the picture?

22 THE COURT: Yes.

23 All right. The next document that was in dispute
24 is? Government 354, is that right?

25 MR. AGNIFILO: 354.

1 THE COURT: Okay. Yes, Mr. Agnifilo.

2 MR. AGNIFILO: My concern is we have Caroline
3 Stewart again using the term "after he blew up the fund." I
4 don't think it's a co-conspirator statement. I'm assuming
5 they're offering it for the truth and it's a prior out of
6 court statement offered for the truth without a hearsay
7 exception.

8 THE COURT: Is this already in evidence or something
9 like it?

10 MS. SMITH: The chat between Mr. Mulleady and
11 Ms. Stewart is in subject to connection. The way we're going
12 to connect it, it then gets forwarded to the defendant who
13 responds, so it is defendant's statement, but this one is a
14 different time period. I think it is significant, that
15 Caroline Stewart chat I believe is in June and this is now in
16 August, he's hearing it again. So, I think that the timing is
17 actually significant because it is right around the time that,
18 again, he's recruiting people to the fund.

19 THE COURT: So, what is the basis for offering this
20 if not for the truth?

21 MS. SMITH: Again, I think it is same basis of
22 notice, that he's on notice about the funds blowing up and for
23 his state of mind.

24 MR. AGNIFILO: He's only on notice if it's true and
25 you can't get away from the truth of a fairly prejudicial

1 statement and Caroline Stewart here is not a co-conspirator
2 and here is not an agent.

3 THE COURT: She testified at length about her
4 frustration in not being paid what she had been promised and
5 the fact that there was no money in the fund and that's why
6 she wasn't paid. This seems to be about that, that there's an
7 offer to settle up with her in some way and pay her some money
8 perhaps.

9 MR. AGNIFILO: My concern, Judge, we got these over
10 the weekend, she already testified, so she testifies, she's
11 gone and then they put in an e-mail from her that we can't
12 cross-examine her on. That doesn't seem -- I think that alone
13 should make it not come in. I mean had we gotten to see them
14 before she testified, I could see some rationale but to have
15 her on the stand and off the stand and give us one of her
16 e-mails that I can't cross-examine her on just doesn't seem
17 right. I'm not faulting anybody, I'm just talking purely from
18 a cross-examination standpoint.

19 THE COURT: I don't think this shows that
20 Mr. Mulleady is necessarily a co-conspirator and I think it's
21 being offered in some respects for the truth that she's not
22 being paid and the funds are tight so I think we should
23 exclude 354.

24 MS. SMITH: Okay.

25 THE COURT: What's next?

1 MR. AGNIFILO: 356. My concern with 356, it seems
2 to be a draft MSMB Capital Management presentation with
3 corrections, so it doesn't seem to be the final one. If it
4 was the final one, I would have no objection to it but it
5 seems by its own terms -- Mulleady is saying: Please review
6 the attached Excel corrections in red. And then he asks
7 Martin: The PowerPoint is ready to go out to prospective
8 clients with your approval.

9 This sort of leaves in doubt if this is the final
10 one and if it's not the final one, I don't know what relevance
11 it has.

12 THE COURT: I'll tell you why it is relevant in my
13 mind, because it shows that he's answering to somebody or he's
14 seeking approval from Mr. Shkreli and to the extent he may
15 have been making his own statements without authority or
16 direction, it shows that he's seeking approval of Mr. Shkreli
17 on this presentation and it does, to the extent the government
18 has argued that this relates to that, parts of that rant
19 anyway, the rant e-mail, it ties the two together, but I do
20 think it's not being offered for the truth but rather to show
21 that he's seeking approval and direction from the defendant.
22 So, I would overrule the objection --

23 MR. AGNIFILO: Yes, Judge.

24 THE COURT: -- if that's the only basis. 356 would
25 be admissible.

1 (Government's Exhibit 356 so marked in evidence.)

2 Is there anything else?

3 MR. AGNIFILO: Yes, there is, Judge. The next one I
4 have is 364. This comes back to whether Greebel and Biestek
5 are co-conspirators. I don't know that there's sufficient
6 evidence that either of them are. So, that's the basis for
7 objection to 364.

8 THE COURT: I think we admitted similar e-mails in
9 the documents that were challenged by the defense over the
10 weekend.

11 MS. SMITH: We have. So, Government Exhibit 236 is
12 the e-mail that Greebel sends at the bottom here which is
13 already in evidence and this is Mr. Biestek's response. The
14 next exhibit which is 365 is also Mr. Vaino's response and
15 there's obviously evidence in the record that both of them
16 were working at Retrophin at the time.

17 So, in terms of conspiracy on Count Eight, both of
18 these, 364 and 365, go directly to that conspiracy.

19 MR. AGNIFILO: As to 365, Judge, I don't know that
20 there's any evidence that Vaino is a co-conspirator. It is
21 still not clear to me, and this is an issue for another day,
22 although a day soon in terms of Rule 29, what evidence there
23 is of the Count Eight conspiracy and if there is evidence of
24 the Count Eight conspiracy, which we contest there's none,
25 what role Andrew Vaino had as a knowing, willing

1 co-conspirator such that this e-mail would be admissible as a
2 co-conspirator statement.

3 THE COURT: Well, isn't he in the group of the
4 select few who are able to purchase --

5 MR. AGNIFILO: He is, true.

6 THE COURT: -- the shares at a discount, .001 per
7 share?

8 MR. AGNIFILO: Right.

9 THE COURT: And part of the theory of the government
10 is that those folks were hand selected by Mr. Shkreli and that
11 Mr. Greebel cooperated with him or joined with him in
12 directing these select investors to make statements, he wanted
13 them to send an e-mail confirming what's here.

14 So, I'll hear from the government whether Mr. Vaino
15 is a co-conspirator in their view or whether it is sufficient
16 to show the Count Eight attempt to control the free trading --
17 limit free trading shares of Desert Gateway at the time of the
18 reverse merger.

19 MS. SMITH: So, for both of these e-mails, these, as
20 Your Honor said, they're both individuals who were given the
21 opportunity to purchase the Fearnow shares which were free
22 trading, however, if they were affiliates they would no longer
23 be free trading, they would be restricted and so by kind of
24 saying that they're not affiliates even when they're working
25 for Retrophin, they allow the shares to remain free trading

1 and at the same time they also give the defendant control over
2 the shares, so if he asked them not to sell or he asked them
3 to sell, that can affect the trading price and volume because
4 at the time the Fearnow shares represented I believe
5 80 percent of the float or of the shares that could in fact be
6 traded.

7 So, this is direct evidence that they were saying
8 that, you know, they agreed to say that they were not
9 affiliates when in fact they were working for Retrophin. I
10 think Marek Biestek's involvement is pretty clear, he was
11 basically given the opportunity to buy Fearnow shares because
12 he agreed to backdate a share transfer with the defendant to
13 create the MSMB Capital interest; and for Andrew Vaino, he
14 allows his free trading shares to be assigned by the defendant
15 to Richard Kocher in satisfaction of the settlement agreement
16 which is what we saw in the Standard Registrar documents. So,
17 I think these are very clear evidence of that conspiracy.

18 MR. AGNIFILO: Judge, I don't know that we have
19 nearly enough evidence of a conspiracy for there to be a
20 crime. The attempt to control shares is not a violation of
21 the securities laws, I mean you need what Mr. Pierotti said
22 specifically did not happen which is you need buying and
23 selling and buying and selling to artificially create volume
24 and then you need an inside group and an outside group. I
25 mean the case law on pump and dumps is pretty clear and we're

1 not -- I don't think we're even close to what would be a
2 securities violation and so the government's I think position
3 that there's a proven securities fraud conspiracy in this
4 record just doesn't exist, I don't think we're even close and
5 so all these different statements of Vaino and Biestek and
6 things like that presuppose the existence of a crime and I
7 just don't think there's evidence of an actual securities
8 fraud conspiracy. I mean the case law on this is pretty
9 specific, I mean it's not enough to try to attempt to control
10 a stock, you need to do something in regard to the volume of
11 the stock so that there's an inside group and an outside group
12 and a group of investors gets hurt because they're not in with
13 the pump and dump flow.

14 And what the government really has is sort of, you
15 know, in the best case scenario a foundation of a house with
16 no house. You know, they're saying, well, look, these guys
17 were going to control the shares and possibly do something
18 illegal but nothing illegal ever happened and what Pierotti
19 said, he sort of blurted it out, he said, well, if you buy and
20 sell and you buy and sell, you create volume, but then he
21 says, I heard from Biestek that that never happened, and that
22 was his testimony.

23 So, I think we're just very far from a completed
24 crime and without a completed crime I don't think we get any
25 of these things in as co-conspirator statements.

1 THE COURT: So, your view is that it's not enough to
2 use a fraudulent scheme in connection with a purchase or sale
3 of securities, that there has to actually be an effect on the
4 market? Because if you're saying that you have to actually
5 have had the artificial trading among the insiders, the
6 Fearnow shareholders, and that would have had to artificially
7 affect the share price and the volume, unless you have that
8 you don't have a securities fraud claim, is that your view?

9 MR. AGNIFILO: Yes, and to answer Your Honor's --
10 the first part of Your Honor's question, I don't believe it's
11 a fraudulent scheme without that. So, my position is not that
12 you have a fraudulent scheme without an effect on the market,
13 my position is it's not a fraudulent scheme.

14 THE COURT: I know that but that's a jury issue,
15 right, they have to decide whether or not the notice to
16 certain employees of Retrophin that you're no longer employees
17 and you now go out and buy these shares at this special price
18 that are free trading, you put them in a Scottrade account and
19 you -- there's a request by Mr. Shkreli's assistant that they
20 get reports about the trading activity among this group and
21 then Mr. Shkreli does assert control over some of these shares
22 to resolve issues with MSMB Capital, Elea Capital and MSMB
23 Healthcare investors. So, this is an issue for the jury to
24 decide whether there's evidence there that is evidence of a
25 fraudulent scheme, right?

1 MR. AGNIFILO: Right, right. I mean it's a jury
2 question but I guess this tees it up as a question for Your
3 Honor in the first instance.

4 MS. SMITH: Your Honor, I don't think that it's an
5 admissibility issue, I mean to the extent that this is an
6 argument that doesn't get to the jury, it is a Rule 29
7 argument, I'm sure we'll get there, but it is not a question
8 of admissibility.

9 MR. AGNIFILO: I'm not sure that it is not because
10 to be a co-conspirator you have to be a co-conspirator in
11 connection with an actual crime and if there's no actual
12 crime, you're not a co-conspirator. So, that's why we find
13 ourself in this position with statements like this.

14 MS. SMITH: Your Honor, there's been a lot of
15 evidence that's come in on the Fearnow shares, this is the
16 first time I'm hearing that Count Eight is not a cognizable
17 crime, the defense certainly didn't move on this. So, at this
18 point, again, these are individuals who received shares,
19 they're saying that they're not affiliated with Retrophin,
20 there's been lots of testimony that they in fact were working
21 for Retrophin at the time.

22 As for Mr. Pierotti's statement, it was a statement
23 made to him by Mr. Biestek that, oh, it didn't really happen
24 and there is in fact evidence that there was trading among the
25 Fearnow share group during the critical time period which came

1 in through Ms. Oremland. So, just because a co-conspirator
2 says to someone, oh, don't worry, we didn't actually do
3 it doesn't mean that -- that's not evidence that it didn't
4 happen and, again, we're talking about admissibility, these
5 are clearly relevant statements, they're all statements made
6 by employees of Retrophin at the time and they complete
7 e-mails that are already in from Mr. Greebel and I just don't
8 think this is a admissibility issue.

9 MR. AGNIFILO: Just one last, the evidence that it
10 didn't happen is Government Exhibit 630 which is the trading
11 records, I mean it didn't happen. Vaino sold, Pierotti sold,
12 there is no buying and trading in order to create volume.
13 That's in the records, that's Government Exhibit 630. Also, I
14 don't believe Vaino was a Retrophin employee at this time and
15 there certainly hasn't been any evidence that he was at this
16 time so I don't think that the government is in quite the
17 position they think they're in.

18 MS. SMITH: Mr. Aselage testified that Andrew Vaino
19 was an employee when he started and he wasn't fired until
20 2014. So, there's more than enough evidence in the record.
21 There are other people who also testified that he was working
22 there, you know, and Pierotti -- I mean look, I think
23 Mr. Agnifilo is also confused -- conflating, excuse me, in
24 conspiracy success is not an element, an agreement to do
25 something is alone a crime. So, whether or not the trading

Proceedings

4750

1 actually occurred, I think we have a different view of the
2 evidence and there are instances where Mr. Shkreli himself is
3 buying during the period but I don't think the evidence of
4 whether it actually occurred goes to whether a crime occurred
5 because it's a conspiracy because once there's an agreement to
6 do it, which Mr. Pierotti testified about, that is in and of
7 itself enough for the crime.

8 THE COURT: All right. I think that Exhibits 364
9 and 365 and 366 that all relate to this e-mail that
10 Mr. Greebel sends asking that these Fearnow shareholders write
11 an e-mail to confirm the following with return e-mail are
12 admissible for the reasons stated and I think that certainly
13 it doesn't foreclose arguments by the parties as to what the
14 significance and weight is of these particular series of
15 e-mails. So, with regard to 364 through 366, I'm respectfully
16 overruling the defense objection.

17 MR. AGNIFILO: I think 367 is probably in that
18 category.

19 THE COURT: Oh, you're right. Yes, 367 also and
20 maybe even -- yes, 367. So, let's admit 364 through 367.

21 (Government's Exhibits 364 through 367 so marked in
22 evidence.)

23 THE COURT: And then what about 368, Mr. Agnifilo?

24 MR. AGNIFILO: Yes, Judge, we object to 368. It
25 seems to be just another argument between Mulleady and

1 Mr. Shkreli. I don't know how it advances the ball. I'm not
2 seeing it. It's Mulleady's objecting to certain tone or
3 language that's being used. Shkreli is saying, OMG, not this
4 again. I just don't -- maybe there's a relevance here, I just
5 don't see it.

6 MS. SMITH: So, if you start with the first e-mail
7 on the second page, it is December 16th so it is right after
8 the reverse merger and Mr. Shkreli is saying that -- he's
9 talking about what he needs to do to and he's talking with
10 Mr. Mulleady about what he wants to do in connection with
11 Retrophin and discussing getting a replacement server e-mail
12 and moving Aselage to board of managers, that he's going to
13 give Mr. Shkreli a new bio and then if you turn the page to
14 the next e-mail you can see Kevin @ stonecornergroup.com which
15 is a new e-mail that's not a Retrophin e-mail and he's
16 waiting at the bottom: I set up this e-mail, which he sets up
17 a non-Retrophin e-mail, and says: Do you think I should stay
18 home till Fed Ex comes.

19 And that's waiting for his Fearnow shares which we
20 can show from the Standard Registrar documents were sent out
21 on December 14th.

22 And then, you know, you can go towards the top,
23 Mr. Shkreli is saying, you know, come into work basically at
24 Retrophin. So, he's changed his e-mail address to a different
25 e-mail address that's not a Retrophin e-mail address, he's

1 waiting for his Fearnow shares but there's evidence throughout
2 the e-mail chain that he's actually coming to work for
3 Retrophin and so that's the significance, it is basically he's
4 created a new address so that there's no connection to
5 Retrophin but it is clear he's still doing work for Retrophin
6 and he's waiting to receive the Fearnow shares.

7 So, that's the reason why this e-mail is highly
8 relevant and we think it is admissible. At the very least it
9 is the defendant's statements since he's at the top of the
10 e-mail chain but also a co-conspirator and, you know, and all
11 the other reasons we've kind of articulated.

12 THE COURT: Well, what about the e-mail that comes
13 after where he says: I don't appreciate your tone. And then
14 Mr. Shkreli says: OMG, not this again.

15 MS. SMITH: We can redact the top two e-mails.

16 THE COURT: Redact it, all right. So, let's redact
17 the December 17th e-mails at 1:22 p.m. from Mr. Shkreli and at
18 8:14 a.m. from Mr. Mulleady.

19 (Continued on next page.)
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Proceedings

4753

1 MS. SMITH: And then if Your Honor has Government's
2 Exhibit 353 marked up we can make those redactions.

3 THE COURT: Sure.

4 MS. SMITH: Then Your Honor, just one other issue
5 that we wanted to raise that we just learned about at lunch.
6 Defense counsel signed a stipulation -- we're good.

7 THE COURT: Stip still going?

8 MR. BRAFMAN: Stip still going.

9 THE COURT: Are we ready to bring the jurors back?

10 MS. KASULIS: Yes, Your Honor.

11 (Jury enters the courtroom.)

12 THE COURT: All jurors are present. Please have a
13 seat.

14 Is the Government prepared to call its next witness?

15 MS. KASULIS: Yes, Your Honor. The Government calls
16 FBI Special Agent Michael Braconi to the stand.

17 (Witness takes the witness stand.)

18 M I C H A E L B R A C O N I, called as a witness, having
19 been first duly sworn/affirmed, was examined and testified as
20 follows:

21 COURTROOM DEPUTY: Please have a seat state and
22 spell your full name.

23 THE WITNESS: Michael Braconi.

24 MS. KASULIS: Before we proceed with Special Agent
25 Braconi's testimony, I'd like to read three stipulations into

Proceedings

4754

1 the record.

2 THE COURT: All right. May we get the spelling of
3 the witness's name?

4 MS. KASULIS: Of course.

5 THE WITNESS: Michael Braconi, M-I-C-H-A-E-L,
6 B-R-A-C-O-N-I.

7 THE COURT: Thank you. We'll hear the stipulations
8 now.

9 MS. KASULIS: Stipulations 807 through 809. Moving
10 those stipulations into evidence we'll go ahead and read those
11 stipulations starting with 807.

12 THE COURT: Is there any objection?

13 MR. BRAFMAN: No.

14 THE COURT: We'll admit.

15 (Government's Exhibit Number 907, 808, and 809 so
16 marked and received in evidence.)

17 MS. KASULIS: Stipulation 807 reads, "It is hereby
18 stipulated and agreed by and between the undersigned parties
19 that from 2007 through 2014 both dates being approximate and
20 inclusive the law firm Cobb & Associates LLC, its predecessor
21 law firm Cobb & Eisenberg LLC and/or employees of those two
22 firms, including Jeffrey Cobb, Esquire, and collectively Cobb,
23 were not retained by and did not act as legal counsel to the
24 defendant, Martin Shkreli, MSMB Capital Management LP, MSMB
25 Capital Management LLC, MSMB Healthcare LP, MSMB Healthcare

1 LLC, and/or any other MSMB entity. In 2006 Cobb drafted the
2 marketing materials for Via Capital Management, including the
3 subscription agreement, private placement memorandum, limited
4 partnership agreement, and purchaser questionnaire."

5 Going to the next page, "This stipulation marked
6 Government's Exhibit 807 is admissible in evidence at trial."
7 Stipulation is dated July 15, 2017 signed by both parties.

8 If we can now turn to stipulation Government's
9 Exhibit 808. This stipulation reads, "It is hereby stipulated
10 an agreed by and between the undersigned parties that from
11 2007 through 2014, both dates being approximate and inclusive,
12 the law firm Kleinberg Kaplan Wolf & Cohen PC and/or its
13 employees, were not retained by and did not act as legal
14 counsel to MSMB Capital Management LP, MSMB Capital Management
15 LLC, MSMB Healthcare LP, and/or MSMB Healthcare LLC."

16 If we can go to the next page, "This stipulation
17 marked Government's Exhibit 808 is admissible in evidence at
18 trial." Dated July 18, 2017 and signed by both parties.

19 The last stipulation I'll read into evidence
20 Government's Exhibit 809. That stipulation reads, "It is
21 hereby stipulated and agreed by and between the undersigned
22 parties that from 2007 through 2014, both dates being
23 approximate and inclusive, the auditing firm Rothstein Kass &
24 Company and/or its employees were not retained by and did not
25 act as auditors for the defendant Martin Shkreli, MSMB Capital

Braconi - Direct - Kasulis

4756

1 Management LP, MSMB Capital Management LLC, MSMB Healthcare
2 LP, and/or MSMB Healthcare LLC."

3 If we go to the next page, please. "This
4 stipulation marked Government's Exhibit 809 is admissible in
5 evidence at trial." Dated July 18, 2017, again signed by both
6 parties.

7 May I proceed with the examination, Your Honor?

8 THE COURT: Yes.

9 MS. KASULIS: Thank you.

10 DIRECT EXAMINATION

11 BY MS. KASULIS:

12 Q Special Agent Braconi, by whom are you employed?

13 A By the FBI.

14 Q Is that also call the Federal Bureau of Investigation?

15 A Yes.

16 Q I think I made reference to it already, what is your
17 title with the FBI?

18 A Special Agent with the FBI.

19 Q How long have you been a Special Agent with the FBI?

20 A It will be eight years in October.

21 Q Are you currently assigned to a specific unit or squad?

22 A Yes, Squad C1.

23 Q What does C1 investigate?

24 A We investigate corporate and securities fraud.

25 Q How long have you been assigned to that squad for?

Braconi - Direct - Kasulis

4757

1 A I think it's been six years.

2 Q What did you do before becoming a Special Agent with the
3 FBI?

4 A Before I became a Special Agent with the FBI I worked at
5 a public accounting firm as an auditor.

6 Q For how long did you work at a firm as an auditor?

7 A I worked as an auditor for three years.

8 Q Were you involved in the investigation of Martin Shkreli?

9 A Yes.

10 Q What role did you play in that investigation?

11 A I was one of two agents that were assigned to this
12 investigation.

13 Q Were Grand Jury subpoenas issued in connection with your
14 investigation?

15 A Yes.

16 Q As part of the Grand Jury subpoenas issued, were
17 subpoenas issued to various banks, companies like Retrophin,
18 and various individuals?

19 A Yes.

20 Q Did you receive responses to those subpoenas?

21 A Yes, I did.

22 Q I'm showing you what is marked for identification and
23 it's behind tabs one through 13 in your binder marked Braconi
24 Exhibits, you have three binders in front of you. I'm showing
25 you what is marked for identification as Government's Exhibit

Braconi - Direct - Kasulis

4758

1 902 through 908, Government's Exhibit 916 through 918,
2 Government's Exhibit 924, Government's Exhibit 926,
3 Government's Exhibit 932, and Government's Exhibit 935. Again
4 it's tabs one to 13 in your binder. Do you recognize these
5 exhibits?

6 A Yes.

7 Q What are they?

8 A These are statements by Martin Shkreli to the SEC and to
9 FINRA.

10 Q For the statements to FINRA, are those dated May 15,
11 2012?

12 A Yes.

13 Q For the statements made by the defendant Martin Shkreli
14 to the SEC, was that on August 7, 2013 or February 24, 2014?

15 A Yes.

16 MS. KASULIS: The Government moves these exhibits
17 into evidence.

18 MR. AGNIFILO: No objection.

19 THE COURT: We will receive Exhibit 902 to 908, 916
20 to 918, 924, 926, 932 and 935.

21 (Government's Exhibit Number 902 through 908, 916
22 through 918, 926, 926, 932, and 935 so marked and received in
23 evidence.)

24 MS. KASULIS: Thank you, Your Honor.

25 MR. AGNIFILO: Is that 945 or 35?

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4759

1 THE COURT: 935, did I misspeak?

2 BY MS. KASULIS:

3 Q Let's go to tab one, this is Government's Exhibit 902.

4 You'll see with respect to the first page of this exhibit this
5 appears to be a cover sheet related to statements made by the
6 defendant to FINRA; is that correct?

7 A Yes.

8 Q If we turn to the second page, I will go ahead and read
9 the questions and if you could reads the answers of
10 Mr. Shkreli, that will be the case for the remainder of the
11 statements.

12 "Question: Mr. Shkreli, would you state your name
13 and your home and business addresses for the record please?"

14 A "Martin Shkreli, home address, Brooklyn, New York, 11230.
15 Business address, 330 Madison Avenue, Sixth Floor, New York,
16 New York 10017."

17 Q If we go to tab two, exhibit 903. Again, the same cover
18 page regarding Mr. Shkreli's statements to FINRA on May 15,
19 2012; is that correct?

20 A Yes.

21 Q If we go to the next page of this exhibit, I'll go ahead
22 and start with the question.

23 "Question: Did you have any formal education
24 following your graduation from City-As-School?"

25 A "Yes."

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4760

1 Q "Where?"

2 A "CUNY Baruch College."

3 Q "When did you first attend CUNY Baruch?"

4 A "September 2001."

5 Q "For how long did you attend CUNY Baruch?"

6 A "Three years."

7 Q "Did you graduate?"

8 A "Yes."

9 Q "What degree did you get?"

10 A "Bachelor's in business administration and finance."

11 Q "Was that in 2004?"

12 A "Correct."

13 Q "Did you have any formal education beyond your three
14 years at CUNY Baruch?"

15 A "No."

16 Q Turn to tab three, Government's Exhibit 904. Again,
17 exhibit 904 has the same first page regarding Mr. Shkreli's
18 testimony to FINRA on May 15, 2012; is that correct?

19 A Yes.

20 Q I'll start with the question, "Why did you leave Intrepid
21 after a year?"

22 A "I left Intrepid to launch my own hedge fund, Elea
23 Capital."

24 Q "That's E-L-E-A?"

25 A "Yes."

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4761

1 Q "When did you start operating Elea Capital?"

2 A "March 1st, 2006 was the first day."

3 Q "For what period of time did you continue to operate Elea
4 Capital?"

5 A "Approximately a year-and-a-half."

6 Q Let's turn to the next tab four, Government's Exhibit
7 905. Again the same cover page regarding Mr. Shkreli's
8 testimony to FINRA on May 15, 2012. If we go to the second
9 page, starting on the bottom, left-hand side. I'll start with
10 the question.

11 "Question: Were the investment results of Elea
12 Capital favorable or unfavorable?"

13 We can skip the objection.

14 A "Unfavorable."

15 Q "Unfavorable in what respect? How did it perform?"

16 A "The investors lost their entire principal."

17 Q "Was that due to one particular trade?"

18 A "Yes."

19 Q "And did the firm shut down as a result of that loss?"

20 A "Yes."

21 Q "And what was the nature of the trade that caused the
22 loss of the investor's principal?"

23 A "It was a loss that resulted in greater losses than the
24 firm had in assets."

25 Q Let's turn to tab five, Government's Exhibit 906. Same

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4762

1 first page of the exhibit as the others we've seen so far,
2 Mr. Shkreli's testimony to FINRA dated May 15, 2012.

3 If we turn to the next page, the question in this
4 exhibit is, "When did you start MSMB Capital?"

5 A "The middle of 2009."

6 Q Let's go to tab six, Government's Exhibit 908. Again,
7 the first page of this exhibit is again testimony by
8 Mr. Shkreli to FINRA on May 15, 2012.

9 I refer you to the next page, I'll begin with the
10 question, "Are you familiar with an entity called NAV
11 Consulting?"

12 A "Yes."

13 Q "What is NAV Consulting?"

14 A "They are a third-party administrator."

15 Q "Has NAV Consulting ever performed any services for MSMB
16 Capital Management LP?"

17 A "Not to my recollection, no."

18 Q Tab seven, Government's Exhibit 916, the first page of
19 this exhibit shows the witness is Martin Shkreli to the United
20 States SEC. The date is August 7, 2013.

21 If we go to the next page I'll start with the
22 question, "We are referring to Mr. Austin's investments,
23 Mr. Shkreli. Did you ever have trading discretion over any of
24 his money?"

25 A "No, not specifically, no."

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4763

1 Q If we go to the next tab, tab eight, Government's Exhibit
2 917. Again, the first page of this exhibit shows Martin
3 Shkreli is a witness before the SEC on August 7, 2013.

4 If we go to the next page, the question is, "So what
5 was the maximum asset value for MSMB Capital management or do
6 you know what it was in December of 2010?"

7 A "I don't, but the fund was never more than 3 million or
8 so."

9 Q If we go to the next tab, tab nine, this is Government's
10 Exhibit 918. Again, it shows Mr. Shkreli is the witness
11 before the SEC on August 7, 2013.

12 If we go to the next page, "Question: Did Rothstein
13 Kass ever do any work for MSMB Capital Management LP?"

14 A "No."

15 Q "And did NAV Consulting ever do any work for MSMB Capital
16 Management LP?"

17 A "No."

18 Q Before we proceed, can we please pull up what is already
19 in evidence as Government's Exhibit 5, this was the PPM that
20 was sent to Sarah Hassan regarding MSMB Capital Management.
21 If we can go to the page ending in 260, if we can zoom in on
22 the auditor section.

23 Who is the auditor listed there for MSMB Capital
24 Management?

25 A Rothstein Kass & Company.

Braconi - Direct - Kasulis

4764

1 Q Thank you. If we turn back to tab ten, Government's
2 Exhibit 924, which is in evidence, first page of this exhibit
3 shows Martin Shkreli is a witness before the SEC on
4 February 24, 2014.

5 If we turn to the next page I'll start with the
6 question, "You mentioned a personal loan, why don't you
7 describe that for me?"

8 A "Sure. It was a loan of \$775,000. It was made to me
9 personally but it was really not -- it didn't have to be a
10 personal loan, at the end of the day this was a loan to
11 satisfy a settlement on a related entity and it beared a
12 10 percent interest. I recall discussing the loan with one of
13 my partners Marek Biestek who I believe this Commission is
14 aware of. The loan is soon to be paid back sort of a function
15 of my own personal liquidity, which is just freed up and the
16 type of loan as it was described was to be complete a
17 settlement payment which after the repayment of this loan I
18 almost completely paid myself, which is something I didn't
19 have to do, this was a loss suffered by a fund, MSMB Capital
20 Management LP. As I mentioned, after the next few weeks are
21 done, Mr. Biestek and myself will pay 100 percent of the
22 fund's losses personally."

23 Q "When was -- was this loan documented?"

24 A "It's a great question. We certainly spent time thinking
25 about how to transact this loan and we did the best we could

Braconi - Direct - Kasulis

4765

1 to document it. As you know, we had not produced
2 documentation of the loan. I remember attempting to document
3 this loan, we did our best to try to do that. We have been
4 unable to produce any such documentation."

5 Q And Special Agent Braconi, in your review of the
6 materials does the term personal loan in the question, "You
7 mentioned a personal loan why don't you describe that for me,"
8 refer to a \$775,000 payment made from MSMB Healthcare
9 Management LP to the defendant?

10 A That's correct.

11 Q If we turn to the next tab, Government's Exhibit 926.
12 Again, this shows Martin Shkreli is a witness before the SEC
13 dated Monday February 24, 2014.

14 If we turn to the next page, the question is, "Did
15 you make any written disclosure to the limited partners?"

16 A "No."

17 Q Special Agent Braconi, in your review of the materials
18 does the question, "Did you make any written disclosure to the
19 limited partners refer," to whether the defendant made a
20 written disclosure to the limited partners of MSMB Healthcare
21 Management of the \$775,000 payment made from MSMB Healthcare
22 Management LP to the defendant?

23 A That's correct.

24 Q If we turn to tab 12, it's Government's Exhibit 932, the
25 first page of this exhibit shows Martin Shkreli as a witness

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4766

1 before the Securities & Exchange Commission with the date of
2 February 24, 2014.

3 If we turn to the next page or the page after that,
4 the question is, "Who authorized the payment of \$775,000 by
5 MSMB Healthcare to Merrill Lynch?"

6 A "I did."

7 Q If we go to tab 13, Government's Exhibit 935, the first
8 page again confirms this is Martin Shkreli's testimony before
9 the SEC on February 24, 2014.

10 If we turn to the next page of this document, I'll
11 start with the question, "Would there have been enough cash if
12 everybody had elected for cash?"

13 A "No."

14 Q Now Special Agent Braconi, in your review of the
15 materials with respect to the question, "Would there have been
16 enough cash if everybody had elected for cash," is that
17 referencing to whether there would have been enough cash on or
18 about September 9, 2012, to allow all of the MSMB Capital
19 Management LP and MSMB Healthcare Management LP investors to
20 redeem their investments for cash?

21 A That's correct.

22 Q Now directing your attention to tabs 14 through 85 of the
23 binder in front of you, behind those tabs are documents that
24 the Government has marked for identification as Government's
25 Exhibits 71-1 through 78-6; Government's Exhibit 84-1 through

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4767

1 84-13; Government's Exhibit 85-1 through 85-4; Government's
2 Exhibit 86-1 to 86-2; Government's Exhibit 87-1; Government's
3 Exhibit 88-1 to 88-4; Government's Exhibit 89-1 to 89-16;
4 Government's Exhibit 90-1 to 90-9; Government's Exhibit 92-1
5 to 92-11; Government's Exhibit 93-1 to 93-5; and Government's
6 Exhibit 94-1.

7 Do you recognize these exhibits, Special Agent
8 Braconi?

9 A Yes.

10 Q What are they?

11 A These are investor statements for MSMB Capital and MSMB
12 Healthcare.

13 Q Investors?

14 A Investor statements.

15 MS. KASULIS: Thank you. The Government moves to
16 admit these exhibits into evidence.

17 MR. AGNIFILO: One second, Your Honor.

18 THE COURT: May I get a clarification for the
19 record, you identified 71-1 through 78-6. How high does 71-1
20 go through the series?

21 MS. KASULIS: It's 78, Your Honor.

22 THE COURT: It's 78-1 through 78-6.

23 MS. KASULIS: Yes.

24 MR. AGNIFILO: That's why I can't find them.

25 MS. KASULIS: I may have misspoke.

Braconi - Direct - Kasulis

4768

1 MR. AGNIFILO: No objection.

2 MS. KASULIS: 78-1 through 78-6 was the first range.

3 Thank you, Your Honor.

4 THE COURT: So no objection. We will admit 78-1
5 through 78-6; 84-1 through 84-13; 85-1 through 85-4; 86-1 and
6 two; 87-1; 88-1 through 88-4; 89-1 through 89-16; 90-1 through
7 90-9; 92-1 through 92-11; 93-1 through 93-5; and 94-1.

8 (Government's Exhibit Number 78-1 through 78-6; 94-1
9 through 94-13; 85-1 through 85-4; 86-1, 86-2; 87-1, 88-1
10 through 88-4; 89-1 through 89-16; 90-1 through 90-9; 92-1
11 through 92-11; 93-1 through 93-5; and 94-1 so marked and
12 received in evidence.)

13 MS. KASULIS: Thank you, Your Honor.

14 BY MS. KASULIS:

15 Q Special Agent Braconi, if we could turn to tab 14 of your
16 binder, Government's Exhibit 78-1. Can you please explain
17 this exhibit for the jury?

18 A This is an e-mail from Martin Shkreli to Brent Saunders
19 with his MSMB performance estimate for February 2011.

20 Q If you could read below the title starting with MSMB
21 returned, the first sentence?

22 A "MSMB returned positive 4.24 percent in February 2011."

23 Q Below that?

24 A "MSMB has returned positive 8.2 percent year to date."

25 Q That's what "YTD" stands for?

Braconi - Direct - Kasulis

4769

1 A Yes.

2 Q Right below that, the first sentence?

3 A "MSMB has returned positive 41.71 percent since inception
4 on November 1st, 2009."

5 Q And again, this is a statement for February of 2011?

6 A That's correct.

7 Q Then the sentence a couple of sentences below starting
8 "in total"?

9 A "In total you have invested \$250,000. The value of this
10 investment is now approximately \$258,590 after fees, a
11 3.44 percent return after fees."

12 Q Then this is signed by Martin Shkreli MSMB Capital
13 Management LP; is that correct?

14 A That's correct.

15 Q I'd like to pull up what is in evidence already as
16 Government's Exhibit 520 one of Wendy Spaulding's who
17 testified previously, one of her summary charts for MSMB
18 Capital. If we can look at the January and February 2011 time
19 period for the accounts for MSMB Capital for January 2011.
20 What is the ending balance for the bank and brokerage accounts
21 on this chart for MSMB Capital?

22 A \$1,126,464.

23 Q So that's for January of 2011?

24 A That's correct.

25 Q So for February of 2011, which is what this statement

Braconi - Direct - Kasulis

4770

1 Government's Exhibit 78-1 that month is earning, what is the
2 ending balance for the MSMB Capital bank and brokerage
3 accounts?

4 A \$58,502.

5 Q Thank you. If we can turn to tab 16, Government's
6 Exhibit 78-3, can you explain what this document is to the
7 jury?

8 A Sure. This is an e-mail from Martin Shkreli to Brent
9 Saunders, his MSMB performance estimates a correction for
10 November 2011.

11 Q What is the date on this e-mail?

12 A January 25, 2012.

13 Q So when you're saying this is a correction, the
14 performance numbers listed in the original e-mail is that
15 supposed to be for November 2011 and not October 2011, which
16 is listed in the original e-mail?

17 A Yes. It looks like the percentage also changes.

18 Q So with respect to how much MSMB returned in that month,
19 what is listed here?

20 A "MSMB lost 4.08 percent net in November 2011."

21 Q If you look at the line under net returns for year to
22 date starting "MSMB has returned," do you see that?

23 A Yes.

24 Q Can you read that sentence?

25 A "MSMB has returned positive 6.89 percent net of fees year

Braconi - Direct - Kasulis

4771

1 to date through the end of November 2011."

2 Q Then the first sentence right below that?

3 A "MSMB has returned positive 30.53 percent net of fees
4 since inception on November 1st, 2009."

5 Q Under account values, can you please read those two
6 sentences?

7 A "You invested \$150,000 on August 3rd, 2010, the value of
8 this investment is now approximately \$147,761 net of fees or
9 positive 6.89 percent year to date or negative 1.49 percent
10 since inception."

11 Q If you look at right before the signature area for
12 Mr. Shkreli, can you read that line December 2011?

13 A "December 2011 results will be reported shortly. Our
14 preliminary estimate is a positive 10 percent net return for
15 December 2011."

16 Q Okay. So let's go ahead and go back to Government's
17 Exhibit 520, one of Ms. Spaulding's summary charts for the
18 bank and brokerage accounts for MSMB Capital. If we look to
19 the right side of this chart it appears to end July 2011; is
20 that correct, Special Agent Braconi?

21 A That's correct.

22 Q Do you have an understanding as to why there is nothing
23 after July 2011?

24 A The balances were zero in these accounts.

25 Q So for example, if we go back to Government's Exhibit

Braconi - Direct - Kasulis

4772

1 78.3, the bank and brokerage records for this time period
2 November 2011 for MSMB Capital, the balance was zero between
3 those brokerage accounts; is that correct; and bank accounts?

4 A That's correct.

5 Q Directing your attention to tab 18, Government's Exhibit
6 78-5. Can you please describe this e-mail for the jury?

7 A This is an e-mail from Martin Shkreli to Brent Saunders
8 on March 4, 2012 regarding his MSMB performance estimate for
9 2011.

10 Q So this e-mail is two months after the month ending in
11 December 2011?

12 A Yes.

13 Q Can you read the first sentences of the first three lines
14 there under net returns?

15 A Sure. "MSMB returned positive 12.14 percent net in
16 December 2011.

17 "MSMB has returned positive 19.87 percent net of
18 fees in 2011.

19 MSMB has returned positive 48.29 percent net of fees
20 since inception on November 1, 2009.

21 Q If could you read under the account values the first two
22 sentences there?

23 A "You invested \$150,000 on August 3rd, 2010, the value of
24 the investment is now approximately \$165,704 net of fees, or
25 19.87 percent year to date or positive 10.47 percent since

Braconi - Direct - Kasulis

4773

1 inception."

2 Q So for this time period December of 2011, if you recall
3 Wendy Spaulding's summary chart at Government's Exhibit 520,
4 how much money was in the bank and brokerage accounts for MSMB
5 Capital in December of 2011?

6 A Zero.

7 Q I'm showing you what is marked for identification as
8 Government's Exhibit 704, it's behind tab C of your binder,
9 behind the chart section.

10 Special Agent, can you please describe what this
11 exhibit is?

12 A This exhibit shows MSMB Capital's, what was listed in the
13 investor statements, sent to the investors versus what was
14 actually in MSMB Capital's bank accounts. So the left hand --

15 Q The jury hasn't seen it yet.

16 A Sorry.

17 Q Did you prepare this chart?

18 A Yes.

19 Q What did you review to prepare this chart?

20 A I reviewed all the MSMB Capital investor statements, as
21 well as the summary bank statements and brokerage accounts.

22 Q Were all these materials voluminous?

23 A Yes.

24 MS. KASULIS: Your Honor the Government moves 704
25 into evidence.

Braconi - Direct - Kasulis

4774

1 MR. AGNIFILO: Can I have a one-minute voir dire?

2 THE COURT: Okay.

3 VOIR DIRE EXAMINATION

4 BY MR. AGNIFILO:

5 Q Special Agent Braconi, very quick, in preparing this
6 chart, did you account for the value of Retrophin at any point
7 in making the chart?

8 A No.

9 MR. AGNIFILO: Nothing else. Thank you.

10 THE COURT: Do you have any objection to admitting?

11 MR. AGNIFILO: Not with that understanding I don't.

12 THE COURT: All right. We will receive Government's
13 Exhibit 704 in evidence. You may publish.

14 (Government's Exhibit Number 704 so marked and
15 received in evidence.)

16 MS. KASULIS: Thank you, Your Honor.

17 DIRECT EXAMINATION (CONTINUED)

18 BY MS. KASULIS:

19 Q Special Agent Braconi, for Government's Exhibit 704 can
20 you please explain this chart for the jury?

21 A Sure. Like I said before, I compared what was sent to
22 the investors, all the investor statements, I added it up,
23 that's the blue. Then I also totaled the MSMB Capital
24 brokerage and bank accounts, that's in the red.

25 Q Can you please explain the three months that you looked

Braconi - Direct - Kasulis

4775

1 at?

2 A Sure. So February 2011, March 2011, and November 2011
3 were the months that I picked. Investors sometimes got
4 statements sporadically, these were months that I had for all
5 the investors.

6 Q For February of 2011, the blue there is MSMB Capital
7 investor statements; is that right?

8 A That's right.

9 Q So what is that \$3,270,913 number, what does that mean?

10 A That means I totaled all the investors for MSMB Capital,
11 all their statements, together it added up to \$3,270,913.

12 Q And the red bar \$58,502, what is that number?

13 A That is MSMB Capital's bank and brokerage accounts
14 combined.

15 Q And for March of 2011, for the total amount for MSMB
16 Capital as listed in the investor statements, what was the
17 total amount?

18 A \$3,182,232.

19 Q With respect to the amount that was in MSMB Capital's
20 bank account and brokerage accounts for that month?

21 A \$58,051.

22 Q With respect to the next month, November, 2011 what was
23 the total amount listed from the investor statements for MSMB
24 Capital investors for that month?

25 A \$3,074,185.

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4776

1 Q How much for the month of November 2011 was in MSMB
2 Capital as bank and brokerage accounts?

3 A Zero.

4 Q Now I want to refer you back to Government's Exhibit 917,
5 which is tab eight of your binder, which is already in
6 evidence. Again, this is Mr. Shkreli's statement to the SEC
7 on August 7 of 2013. If we go to the next page, when
8 Mr. Shkreli was asked, "So what was the maximum asset value
9 for MSMB Capital Management, or do you know what it was in
10 December of 2010," what did he answer?

11 A "I don't, but the fund was never more than 3 million or
12 so."

13 Q Now Special Agent Braconi, did you review all of
14 Ms. Spaulding's summary charts?

15 A Yes.

16 Q Did you review Government's Exhibit 501C, 501E, 502B,
17 502C?

18 A Yes.

19 Q Based on your review of those exhibits, what was the
20 total money invested in MSMB Capital?

21 A \$3,040,000.

22 Q What is approximately 1 percent of that amount?

23 A \$30,000.

24 (Continued on next page.)

25

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4777

1 BY MS. KASULIS:

2 Q Now, what was the total amount of money transferred
3 from MSMB Capital to Retrophin?

4 A Zero.

5 Q All right. So let's go back to the investor statements
6 and let's look at MSMB Healthcare investor. Directing your
7 attention to Tabs 20 through 32 and what we'll start with
8 the next Government's of Exhibit 84-1 through 84-13 and
9 we'll start with Tab 20.

10 Can you please explain this first stage of the
11 exhibit for the jury?

12 A Sure. Yes, this is an e-mail from Martin Kevin, the
13 investor statement -- or Geller, and then Kevin Mulleady
14 forwarded the statement on the Al Geller.

15 Q And your understanding is AGTrading@fhn.com is AL
16 Geller's -- Alan Geller's e-mail address?

17 A That's correct.

18 Q And what is listed here that Mr. Mulleady wrote to
19 Mr. Geller?

20 A "This is hot off the press version. The more
21 comprehensive is on its way. I'll send over as soon as I
22 get it. Sorry for the delay. Up about 3 percent this month
23 so far."

24 Q And if we go to the next page of this document. And if
25 we actually could just look at the bottom really quickly of

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4778

1 this document -- actually the very bottom of the page. I'm
2 sorry. I wasn't very clear.

3 Who is listed here on the bottom of the investor
4 statement?

5 A NAV Consulting, Inc.

6 Q And then right next to it there is a statement,
7 "Prepared by NAV Consulting, Inc. and then in parentheses
8 administrators"?

9 A Yes.

10 Q And then if we then go up. And so this statement on
11 the top left-hand corner appears to be for MSMB Healthcare
12 LP; is that right?

13 A That's correct.

14 Q And the -- the recipient appeared to Alan Geller from
15 Delray Beach, Florida?

16 A Correct.

17 Q And the investor statement is for the month ending
18 April 30th, 2011?

19 A Yes.

20 Q And with respect to the beginning balance area, it
21 looks right underneath that there's a line for additions.
22 How much was added during this month by Mr. Geller?

23 A \$1 million.

24 Q And what was the ending balance this month?

25 A \$993,878.83.

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4779

1 Q And the rate of return?

2 A Was negative .61 percentage.

3 Q So let's go to another one of Ms. Spaulding's summary
4 chart for MSMB Healthcare. Government Exhibit 521.

5 And with respect to this exhibit it appears to
6 have the combined totals for MSMB Healthcare LP, the
7 account -- the ending account balances for two bank accounts
8 and a brokerage account; is that correct, for
9 MSMB Healthcare?

10 A That's correct.

11 Q And so for the combined totals for the month leading up
12 to Mr. Geller's 1 million-dollar addition, February and
13 March of 2011, what are the two dollar amounts listed there?

14 A \$100 for February, 2011 and even \$9 for March, 2011.

15 Q And then for April of 2011 for the accounts listed in
16 this chart, what are the combined totals listed there at the
17 end of April 2011?

18 A \$1,000,732.

19 Q So let's now turn to Tab 24 of your binder. That's
20 Government Exhibit 84-5. Can you please explain this e-mail
21 for the jury?

22 A So it -- it's an e-mail from investor relations at
23 NAVConsulting.net to e-mail address AGTrading5@hotmail.com.

24 I believe is Alan Geller and cc'ing Marge Kelly. It's
25 regarding the September, 2011 investor statement for

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4780

1 MSMB Healthcare LP.

2 Q And at the top of the chain it appears that Mr. Shkreli
3 forwards this e-mail to Kevin Mulleady; is that correct?

4 A That's correct.

5 Q And if we turn to the next page and again, before we
6 zoom in just at the bottom, again do we see this similar NAV
7 Consulting footer on this investor statement?

8 A Yes.

9 Q If we zoom back out, the top of this investor statement
10 lists the statement for MSMB Healthcare LP, the recipient
11 again is Alan Geller for the month ending September 30th,
12 2015. Do you see that?

13 A Yes.

14 Q If we can zoom back out and then go to this language
15 here below the actual dollar amount. Can you please read
16 this for the jury?

17 A "MSMB Healthcare LP has accepted the transfer of 30,000
18 investment units consisting of Class A common units of
19 Retrophin, LLC, a Delaware limited liability company focused
20 on the development -- developing biopharmaceutical products
21 from Marge Kelly and no consideration as a gift. These
22 units are liquid in nature and prices are not readily
23 available in the market. Valuations of this investment have
24 been provided by the general partner. NAV Consulting, Inc.,
25 is not involved in the calculation, verification or

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4781

1 dissemination of such values and disclaims any
2 responsibility for the accuracy or completeness thereof. As
3 of the date in this statement, we are valuing these units at
4 \$10 per unit or \$300,000. Retrophin, LLC, has sold these
5 units at \$20 per unit in connection with a Series A
6 financing. The value of these units is material to the
7 value of your account and may have an adverse impact on your
8 ability to liquidate your investment in MSMB Healthcare LP.
9 MSMB Healthcare LP will not charge any incentive fees on
10 these units until liquidation of these units. Please
11 contact the general partner at (212) 983-1310 if you have
12 any questions or if you would like additional information
13 regarding these units, including detail disclosures on
14 valuation and size of investment."

15 Q And if we zoom that back out and look at the
16 performance for the month for Mr. Geller's investment, so
17 the beginning balance month to date, what is that listed
18 there?

19 A \$974,663.36.

20 Q And the net income?

21 A Is \$107,413.53.

22 Q And are there any additions or redemptions listed this
23 month for Mr. Geller?

24 A No.

25 Q And what is the ending balance listed here?

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4782

1 A \$1,082,076.89.

2 Q And what is the rate of return listed on this
3 statement?

4 A 11.02 percent.

5 Q So let's go back now to Government Exhibit 521,
6 Ms. Spaulding's chart for MSMB Healthcare LP for these two
7 bank accounts and the brokerage account listed in the chart.
8 Let's go ahead and look at September, 2015. What are the
9 specific combined totals listed there for the account
10 balances for MSMB Healthcare at the end of the month?

11 A It's \$1,339,879.

12 Q So now let's look at Tab 27, Government 84-8. Can you
13 please describe this e-mail for the jury?

14 A Sure. This is an e-mail from -- begins with an e-mail
15 from investor relations at NAVconsulting.net to an e-mail
16 AGTrading5@hotmail, Alan Geller, CC Martin Kelly for
17 December, 2011 investor statements for MSMB Healthcare LP
18 and then Martin forwards this is e-mail to Kevin Mulleady.

19 Q And so this is for December of 2011?

20 A That's right.

21 Q And if we turn to the actual account statement. And,
22 again, just based on the e-mail before this, this appears to
23 be sent by NAV Consulting; is that right?

24 A That's correct.

25 Q And at the top of the page it's for MSMB Healthcare LP

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4783

1 and the recipient is Alan Geller again?

2 A Correct.

3 Q And if we look at the bottom -- well, before we go
4 there, it's entitled Individual Account Statement and then
5 underneath that "prepared from books without audit."

6 Do you see that?

7 A Yes.

8 Q If we could zoom back out and look at the language
9 under the ending balance area. So can you please read this
10 language to the jury.

11 A "Fund invests significant portion of capital and
12 affiliated entities valuation of some of these entities is
13 not verified by NAV Consulting, Inc. The partnership
14 invested with its affiliated entities, some of the
15 investments with affiliated -- with affiliated -- some of
16 the investments with affiliates are illiquid in nature and
17 prices are not readily available in the market. Valuation
18 of this investment has been provided by the general partner.
19 NAV Consulting, Inc., is not involved in the calculation
20 verification or dissemination of such values and disclaims
21 any responsibility for the accuracy or completeness thereof.
22 The value of these investments is material to the value of
23 your account. May have an adverse impact on your ability to
24 liquidate your investment in MSMB Healthcare LP.

25 Please contact the general partner at

Braconi - Kasulis - Direct

4784

1 (212) 983-1310 should you have any questions or if you would
2 like additional information regarding these investments
3 including detailed disclosure on valuation and size of
4 investment."

5 Q And if we scroll up, what is the ending balance listed
6 there for Mr. Geller?

7 A \$1,144,997.22.

8 Q And the rate of return?

9 A Is 13.61 percent.

10 Q Okay. And if we go to Government Exhibit 521, it's
11 Ms. Spaulding's chart for MSMB Healthcare and then, again,
12 if we look at December 2011, for these bank accounts and the
13 brokerage account, what is listed there as the combined
14 total for the month of December of 2011 th?

15 A \$304,988.

16 Q Now, Special Agent Braconi, at some point did NAV
17 Consulting stop preparing investor statements for
18 MSMB Healthcare based on your review of the documents?

19 A Yes.

20 Q And who then sent out the investor statements for
21 MSMB Healthcare after that?

22 A Martin Shkreli.

23 Q So let's turn to Tab 31, Government Exhibit 84-12. Can
24 you please explain this exhibit to the jury?

25 A Sure. This is an e-mail dated September 9, 2012 from

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4785

1 Martin Shkreli to Al Geller or AGTrading5@hotmail.com,
2 cc'ing Kevin Mulleady, and it's regarding the June, 2012
3 investor statement for MSMB Healthcare LP.

4 Q And is this signed by Martin Shkreli; is that right?

5 A That's right.

6 Q And it say, "Please see attached statement for the
7 month of June, 2012 for your investment in MSMB Healthcare
8 LP"; is that correct?

9 A That's correct.

10 MR. BRAFMAN: Your Honor.

11 THE COURT: Yes.

12 MR. BRAFMAN: May we have a brief sidebar or is it
13 an appropriate time for a break, we have an issue to
14 discuss.

15 THE COURT: All right. Are the jurors ready for a
16 midafternoon break?

17 JURORS: Yes.

18 THE COURT: Ten minutes, okay. Thank you. We'll
19 excuse your for a while, we'll take a break. Don't discuss
20 the case, please.

21 (Jury exits.)

22 (The following matters occurred outside the
23 presence of the jury.)

24 THE COURT: You may step down.

25 THE WITNESS: Thank you.

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4786

1 THE COURT: Do you want to have a sidebar at the
2 side or --

3 MR. BRAFMAN: We can do it -- I just didn't want
4 to do it in the presence of the jury.

5 THE COURT: I'll ask the litigation agent.

6 MR. BRAFMAN: Judge, there's something
7 fundamentally unfair that I think would require some
8 instruction by the Court. We all know that Al Geller is not
9 being called as a witness by the Government and we all know
10 that over objection the Court has allowed in his agreement
11 but there was some discussion -- it's not -- the agreement
12 is not in evidence, okay.

13 So we don't have an agreement, we don't know why
14 Al Geller got involved, we don't know what he relied on, the
15 3500 material indicates that he really relied on Kevin
16 Mulleady and also the fact that he viewed Martin Shkreli as
17 a genius and actually says to the Government, "I never read
18 any word of substance." But beside the fact, I understand
19 why they didn't call him as a witness. The jury is allowed
20 to see statements being sent to Al Geller which the
21 Government will argue as fraudulent because in their view
22 without evaluating Retrophin there's no money in the bank,
23 therefore there's no money here.

24 It's really somewhat unfair because it shows that
25 his account statement, you know, is the \$1,300,000. If he

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4787

1 were a witness, he would testify that he made \$10 million on
2 his investment with Martin Shkreli in MSMB Healthcare and
3 Retrophin, and he's an investor in Turing as well now. So
4 there's somewhat of a -- of a sort -- of a sort of a snatch
5 of the testimony -- a snatch of the involvement of Al Geller
6 that allows the jury to speculate that he's the victim of
7 the fraud. There's not going to be any evidence that he
8 was, in fact, defrauded, and I think if he were here he
9 would testify that he believed that he was fairly treated
10 and that he saw these statements but understood that they
11 involved Retrophin being valued as well because he was
12 actively involved in conversations with Mr. Shkreli. So I
13 just don't know how you fix this.

14 But to the extent that the Court is not allowed in
15 the consulting agreement by Al Geller, I think there is some
16 instruction that the Court is required to give them, because
17 they're looking at Al Geller through the agent's testimony
18 as if he is a victim of the fraud and they don't see the
19 whole picture.

20 MS. KASULIS: Your Honor, we're not arguing that
21 when Mr. Geller made his initial investment that there were
22 any misrepresentations made to him. I feel like every day's
23 Groundhog Day on the issue. So we are just showing simply
24 that Mr. Geller received monthly investor statements and
25 we're showing the disparity between the statements and what

Braconi - Kasulis - Direct

4788

1 was in the bank and brokerage records. They can
2 cross-examine Special Agent Braconi about that comparison as
3 much as they want on cross-examination. We also are not
4 admitting Mr. Geller's consulting agreement and so we're not
5 talking about, you know, how much he made down the road.
6 That how much he made as we all know that it means a fraud
7 was committed during the time that he was receiving these
8 the investor statements, and so that is simply what we're
9 doing, Mr. Geller he was a major investor in MSMB Healthcare
10 and he did receive, Your Honor, a nonprosecution agreement
11 because he admitted that the consulting agreement that he
12 entered into was fraudulent and that he lied to the
13 Government when he said initially that it was not
14 fraudulent.

15 And so, you know, I don't know what we're doing
16 here. This is simply what we're doing with respect to
17 Mr. Geller. We are not going into the consulting agreement,
18 we're not going into anything having to do with how much
19 money he made, we are just using him and his investor
20 statement for this purpose, which is that he was receiving
21 fraudulent performance numbers in these statements. I
22 have -- literally this is the last one and we're going to a
23 summary charted, we're moving on.

24 MR. BRAFMAN: Your Honor, it isn't Groundhog Day
25 and if it is, I'm sorry. But the fact is that with all of

Braconi - Kasulis - Direct

4789

1 the good things she just said about Al Geller, they made a
2 conscious decision not to call him because I don't think his
3 testimony on balance would support the theories of this case
4 I don't believe he would testify that he was the victim of a
5 fraud and the fact that he got performance estimates or
6 statements is not relevant if he's not someone who is a
7 victim of a fraud. It's complete -- they sent these
8 statements to someone who had not invested in MSMB and who
9 did not have any misunderstanding about the nature of the
10 investment, they could never get them in.

11 So they're talking about a real person who we
12 don't believe is a victim here and the fact that the
13 statement according to agent has an inaccurate balance is
14 really not fair to the defendant because no one will be able
15 to tell the jury the whole Al Geller story. And he has a
16 nonprosecution agreement which meant they intended to call
17 him before they went down this road and he was on the
18 narrowed window of the witness list up until Friday -- two
19 Fridays ago where the 6 or 7 remaining witnesses were
20 identified.

21 But this jury thinks he has been defrauded and
22 he's not defrauded just because he has the statement that
23 the Government doesn't think is accurate.

24 What is Al Geller's position in this case? They
25 don't know that.

Braconi - Kasulis - Direct

4790

1 MS. KASULIS: Your Honor, it doesn't -- it's been
2 misrepresentation made by the defendant that if we -- the
3 focus of this case, that's what the fraud is about.

4 MR. BRAFMAN: It get it.

5 MS. KASULIS: It's not about Mr. Geller and
6 whether he relied on those misrepresentations.

7 And with respect to Mr. Geller, he has a
8 nonpresumption agreement. The defense obviously does not
9 need to put on the case, that is their choice. They
10 obviously do not have to do that, but they can call
11 Mr. Geller as a witness if they would like to. He had a
12 nonprosecution agreement there's no issue there with having
13 to immunize him or anything along those lines, it's their
14 choice not to call him. And so we are using Mr. Geller's
15 statement for the very limited purpose that
16 misrepresentations about his investment were made to him,
17 period; no more, no less, and that is what we're doing.

18 THE COURT: All right. Well, I think consistent
19 with my prior ruling regarding excluding the consultant
20 agreement, they also agreed not to submit his subscription
21 agreement, but really the focus on the multi-performance
22 reports that were provided to him that, you know,
23 the Government hearing that these statements were fraudulent
24 as were untrue as conveyed in the monthly performance
25 report, so it seems to me that to the extent this witness

Braconi - Kasulis - Direct

4791

1 will be cross-examined about his failure to consider the
2 value of Retrophin and the valuation, that is something that
3 they're entitled to explore with the Agent, but I don't
4 think it changes the admissibility of this testimony
5 regarding the monthly performance of Mr. Geller's
6 investment.

7 I'm not quite sure what you're asking me to co.

8 MR. BRAFMAN: I'm asking you to let the jury know
9 that Mr. Geller will not be a witness and that they are
10 not -- you know, they opened on it and so we did.

11 MS. KASULIS: We actually did not open on Al
12 Geller.

13 MR. BRAFMAN: All right. Let me withdraw that.

14 THE COURT: All right. We're going to give them
15 an instruction about, you know, not every witness has to be
16 called in a case.

17 MS. KASULIS: Yes.

18 THE COURT: And not every piece of evidence has to
19 be presented to the jury during the trial. The jury's going
20 to give it whatever weight it thinks it's deserves and
21 you're certainly at liberty to cross-examine this witness
22 and may call him regarding this -- regarding this testimony
23 and the documents as included.

24 MS. KASULIS: Thank you, Your Honor.

25 MR. BRAFMAN: May we have five minutes, Judge.

Braconi - Kasulis - Direct

4792

1 (Recess taken.)

2 THE COURT: We have a development with a juror, if
3 you would like to be heard about it.

4 Juror Number 14 has asked to be excused. She says
5 she work on commission and she's beginning to suffer some
6 financial consequences.

7 MR. BRAFMAN: Back row.

8 MS. KASULIS: Back row.

9 THE COURT: Yeah, Number 14, so she would be in
10 the back row.

11 MR. BRAFMAN: Second seat.

12 THE COURT: Second seat.

13 MR. BRAFMAN: We have no objection.

14 MS. KASULIS: We have no objection.

15 THE COURT: All right. What I'm going to propose
16 to do is just call her in and tell her she may be excused on
17 consent and that she should not discuss that with her fellow
18 jurors and she can just go to the jury room.

19 MR. BRAFMAN: And if approached by anyone not to
20 discuss the case.

21 THE COURT: She should not discuss the case at
22 this time, yes.

23 MR. BRAFMAN: All right.

24 THE COURT: All right.

25 MR. BRAFMAN: May we have five minutes?

Braconi - Kasulis - Direct

4793

1 THE COURT: Of course.

2 (Recess taken.)

3 THE COURT: Are we ready to bring Juror Number 14
4 in, just so she knows she's excused?

5 All right.

6 (Juror Number 14 enters.)

7 THE COURT: Hello.

8 JUROR: Hi.

9 THE COURT: You're Juror Number 14.

10 JUROR: I am.

11 THE COURT: I understand that you've requested to
12 be excused because of work concerns. The parties and the
13 Court are glad render your request. I would just ask that
14 you please not discuss the case with anybody despite the
15 fact that you're no longer in service because it is
16 important that you wait until you read that there's a
17 verdict. You may go to the second floor and let the jury
18 folks know that you've been excused and just get your
19 paperwork. I would ask you also not to be in touch with the
20 jurors who are still actively serving in this case.

21 JUROR: Uh-huh.

22 THE COURT: After the verdict gets published, you
23 are certainly free to discuss.

24 JUROR: All right. Thank you.

25 THE COURT: Be well.

Braconi - Kasulis - Direct

4794

1 JUROR: Thank you. Thank you.

2 THE COURT: All right.

3 MS. KASULIS: Thank you.

4 THE COURT: I'm going to move each of the jurors
5 over one seat to the right on the left row and then they'll
6 be able to find their numbers.

7 All right.

8 I may just let the other jurors know that a juror
9 has been excused but not explain why, all right?

10 MR. BRAFMAN: Judge, we have no objection if you
11 would just say it was work related so they don't speculate
12 that it was something to do with the case.

13 THE COURT: All right. We'll do.

14 MR. BRAFMAN: Thank you.

15 (Jury enters.)

16 (Jury present.)

17 THE COURT: All right. We have 17 jurors present.
18 Everyone can have a seat, please.

19 And let me just advise the jurors that due to
20 work-related concerns and issues, we had excused Juror
21 Number 14. She has agreed to follow the same admonishments
22 I had have given all of you, which is not to discuss the
23 case. And please do not reach out to her until after you
24 are sent to deliberate. You should not concern yourselves
25 beyond what I have told you and we will resume the

Braconi - Kasulis - Direct

4795

1 examination of Special Agent Braconi at this time.

2 And what we will do going forward you will all
3 have moved over one seat. I guess you have already figured
4 that out, so thank you.

5 MS. KASULIS: May I proceed, Your Honor?

6 THE COURT: Yes, please.

7 BY MS. KASULIS:

8 Q Okay. Special Agent Braconi, I'm going to direct your
9 attention back to Government Exhibit 84-12, it's Tab 31 of
10 your binder.

11 Again, can you just briefly explain what this
12 cover e-mail is for the jury.

13 A Sure. It's an e-mail from Martin Shkreli to
14 AGTrading5@hotmail.com cc'ing Kevin Mulleady, and it's
15 regarding a June, 2012 investor statements for MSMB
16 Healthcare LP for Alan Geller.

17 Q And if we turn to the next statement, and just
18 before -- actually just back up.

19 Before we proceed, was this just sent from Martin
20 Shkreli; is that correct?

21 A Correct.

22 Q And signed by Martin Shkreli MSMB Healthcare LP; is
23 that right?

24 A Correct.

25 Q Okay. And if you look at the next page of this

Braconi - Kasulis - Direct

4796

1 document, does this format for the investor statement appear
2 different than the statements that were issued by
3 NAV Consulting?

4 A Yes.

5 Q The title of this statement is MSMB Healthcare LP and
6 then underneath there's that individual account statement
7 and then currently prepared from books without audit. Do
8 you see that?

9 A Yes.

10 Q And then the investor is Alan Geller?

11 A Correct.

12 Q And for the month ending June 31st, 2012?

13 A Yes.

14 Q If you look under the month to date column, the MTB
15 column, what is the ending balance listed there?

16 A It's \$1,403,099.10.

17 Q And what is the rate of return?

18 A 8.57 percent.

19 Q And if we look at Government Exhibit 521. It's
20 Ms. Spaulding's summary chart related to MSMB Healthcare LP,
21 the ending account balances for Chase and Bank of America
22 bank account ending Marlow's [Ph] securities brokerage
23 account. If we look at June, 2012, so if we go to the next
24 page for this time period June, 2012, what is the ending
25 balance for MSMB Healthcare for these three accounts?

Braconi - Kasulis - Direct

4797

1 A \$16,694.

2 Q Now, I'm showing you what has been marked for
3 identification as Government Exhibit 705. It's behind Tab D
4 of the charts tab in your binder. Do you have it there in
5 front of you?

6 A Yes.

7 Q Okay. And what is this?

8 A This is for -- this is a chart for MSMB Healthcare.
9 It's the total of the investor statements versus the total
10 of MSMB Healthcare's bank and brokerage accounts.

11 Q Did you prepare this chart?

12 A Yes.

13 Q And what did you review to prepare this chart?

14 A I reviewed MSMB Healthcare's investor statements, and I
15 also reviewed MSMB Healthcare bank and brokerage summary
16 records.

17 Q And was the material that you reviewed voluminous?

18 A Yes.

19 MS. KASULIS: The Government moves Exhibit 705
20 into evidence.

21 (Government's Exhibit 705 so marked and received
22 in evidence.)

23 MR. AGNIFILO: Could I voir dire?

24 THE COURT: Sure.

25 MR. AGNIFILO: Thank you.

Braconi - Voir Dire - Agnifilo

4798

1 VOIR DIRE EXAMINATION

2 BY MR. AGNIFILO:

3 Q Special Agent Braconi, did you reflect any value of
4 Retrophin in this chart that you made?

5 A I included whatever was on the investor statement. I
6 believe if there was Retrophin listed on the investor
7 statement with a value, it's included.

8 Q And how were you valuing Retrophin; I mean how were you
9 actually valuing the entity?

10 A Whatever was on the investor statement.

11 Q Okay. So this is different than MSMB Capital?

12 A Yes.

13 Q All right.

14 MR. AGNIFILO: With that understanding, Judge, I
15 have no objection.

16 THE COURT: All right. Thank you. We will accept
17 into evidence Government Exhibit 705.

18 (Government's Exhibit 705 received in evidence.)

19 DIRECT EXAMINATION (CONTINUED)

20 BY MS. KASULIS:

21 Q And with respect to that difference with MSMB Capital
22 in your chart, is that because MSMB Capital never invested
23 in Retrophin?

24 A That's correct.

25 Q So, Special Agent Braconi, can you please explain this

Braconi - Kasulis - Direct

4799

1 chart for the jury now that they can see it in front of
2 them?

3 A Sure. So the -- the blue columns are the
4 MSMB Healthcare investor statements. So for all investors,
5 I totaled up all their statements for a particular month and
6 that's the -- the blue. And then for the red, I took the
7 total of all the MSMB Healthcare bank and brokerage accounts
8 and that's the total of the red.

9 Q And why did you pick these months in particular?

10 A I picked these months, one reason was that not all of
11 the investors received statements every month. So for these
12 months I had all the investor statements.

13 Q And if we look, for example, in the July, 2011 time
14 period, can you please explain what this chart shows?

15 A Sure. This chart shows that the MSMB Healthcare
16 investor statements totaled \$1,462,670.71. While
17 MSMB Healthcare bank and brokerage accounts totaled
18 \$1,545,830.

19 Q And then if you look in January, 2012 can you please
20 explain that portion of this chart?

21 A Sure. So the blue, like I said, the total of the MSMB
22 Healthcare investor statements totaled \$2,276,480.44, while
23 the bank and brokerage account for MSMB Healthcare totaled
24 \$216,616.

25 Q And if we look all the way to the right side of this

Braconi - Kasulis - Direct

4800

1 chart for July of 2012, and for that time period, July
2 of 2012, do you recall who was preparing the MSMB Healthcare
3 investor statements?

4 A That was Martin Shkreli.

5 Q And can you please explain what -- what is here on the
6 chart for July of 2012?

7 A The MSMB Healthcare investor statements totaled
8 \$4,376,933.03 while at the same time the MSMB bank and
9 brokerage account balances for July, 2012 were \$111,939.

10 Q Special Agent Braconi, did you review Ms. Spaulding's
11 summary charts related to MSMB Healthcare?

12 A Yes.

13 Q Did you review Government Exhibit 503B as in boy, 503D
14 as in dog, 503E, 504D as in dog, 504E, 505D as in dog, 505E,
15 506D as in dog, 506E, 507B as in boy and 507D as in dog?

16 A Yes.

17 Q And what was the total money invested in
18 MSMB Healthcare from February, 2011 to December of 2012?

19 A It was \$3,502,450.

20 Q And what is approximately 1 percent of that amount?

21 A \$35,000.

22 Q And what was the net amount of money transferred from
23 MSMB Healthcare to Retrophin from February 2011 to December
24 of 2012 based on your review of those exhibits?

25 A \$2,120,800.

Braconi - Kasulis - Direct

4801

1 Q Okay. So now let's look at a different set of
2 exhibits. If you turn to Tab 89 through 94 of your binder,
3 I'm showing you what's been marked for identification as
4 Government's Exhibits 609 through 612; 618 and 619. Do you
5 recognize these exhibits, Special Agent Braconi?

6 A Yes.

7 Q And what are they?

8 A These are SEC Form 10K's, 10Q's and then amended 10K's
9 and 10Q's.

10 Q For which company?

11 A I'm sorry, there's also an 8K in here as well.

12 For Retrophin, Inc.

13 MS. KASULIS: The Government moves these exhibits
14 into evidence.

15 MR. AGNIFILO: No objection.

16 THE COURT: We will receive Government's 609
17 through 612, 618 and 619.

18 (Government's Exhibit 609 through 612, 618 and 619
19 received in evidence.)

20 BY MS. KASULIS:

21 Q If we can look at Government Exhibit 609 first, that's
22 behind Tab 89 of your binder.

23 If we could zoom in on the top portion of this
24 exhibit, Government Exhibit 609. Special Agent Braconi,
25 what is this document?

Braconi - Kasulis - Direct

4802

1 A It's an SEC Form 10K for Retrophin, Inc., the short
2 period March 1st, 2012, to December 31st, 2012.

3 Q And you said it was for Retrophin, Inc.; is that
4 correct?

5 A Correct.

6 Q It lists for Delaware state or other jurisdiction of
7 corporation or organization; is that correct?

8 A Correct.

9 Q And it lists the 777 Third Avenue location New York,
10 New York, for Retrophin?

11 A Yes.

12 Q Now, do you know what -- on what date this 10K was
13 filed? And I can direct your attention to Page 69 of 92 in
14 the bottom right-hand corner.

15 A It was filed on June 13th, 2013.

16 Q Okay. And so if we go to Page 49 of the actual filing,
17 but in the bottom right-hand corner of the actual document,
18 it's marked as 65 of 92 -- sorry, I'll give you a second to
19 get there.

20 Okay. So if we look at the bottom of this page
21 under the section called Director Independence.

22 MS. KASULIS: Can you please highlight that
23 section for the jury at that time very bottom?

24 Thank you.

25 BY MS. KASULIS:

Braconi - Kasulis - Direct

4803

1 Q Special Agent Braconi, can you please read the section
2 for the jury?

3 A "Our securities are not listed on the national security
4 exchange or any interdealer quotation system which has a
5 requirement that a majority of directors be independent. We
6 evaluate independence by the standards for director
7 independence set forth in the NASDAQ marketplace rules.
8 Under these rule, a director is not considered the
9 independent if he or she is also an executive, officer or
10 employee of the corporation. As a result Mr. Shkreli would
11 not be considered independent because he serves as an
12 executive officer of the company.

13 Our other directors Messrs. Osilotti [ph] and
14 Richardson would be considered independent under these
15 rules.

16 Q Thank you.

17 MS. KASULIS: If we can now turn the Page 79 of 92
18 section --

19 (Pause in proceedings.)

20 (Recess taken.)

21 THE COURT: Excuse us.

22 (Jury out.)

23 THE COURT: Thank you.

24 JURORS: Thank you.

25 THE COURT: Sure.

Braconi - Kasulis - Direct

4804

1 MS. KASULIS: May I proceed, Your Honor?

2 THE COURT: Yes, ma'am.

3 BY MS. KASULIS:

4 Q So again, Page 79 of 92.

5 MS. KASULIS: Your Honor, just a moment maybe I
6 can try to move this along.

7 THE COURT: All right.

8 (Pause in proceedings.)

9 (Continued on next page.)

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Braconi - Direct - Kasulis

4805

1 DIRECT EXAMINATION (CONT'D.)

2 BY MS. KASULIS:

3 Q All right. So, this is page 79 of 92 of Government
4 Exhibit 609, if we could look under Note 2 entitled Liquidity
5 and Financial Condition and Management's Plans and, again,
6 this is the 10-K for 2012 for Retrophin; is that correct?

7 A That's correct.

8 Q Can you please read that first paragraph to the jury.

9 A "The company incurred a net loss of approximately
10 \$33.6 million including a stock based compensation charge of
11 \$24,389,521 for the period from March 11, 2011 (inception) to
12 December 31st, 2012. At December 31st, 2012 the company had a
13 cash balance of approximately \$11,000 and a working capital
14 deficiency of approximately \$5,766,000. The company's
15 accumulated deficit amounted to approximately \$33,600,000 at
16 December 31st, 2012."

17 Q And if we can go to page 84 of 92 and up at the top, the
18 Notes Payable section, so it says: Note Payable Related
19 Party. Can you please read that first paragraph to the jury?

20 A On February 1st, 2012 the company entered into a secured
21 promissory note with a related party in the amount of \$900,000
22 with an interest rate of 12 percent per annum compounded
23 monthly. The note plus accrued unpaid interest shall become
24 due on or prior to December 31st, 2012 or upon consummation of
25 the sale of the company to acquire a majority of the

Braconi - Direct - Kasulis

4806

1 outstanding equity securities or all of the substantially --
2 all of the company's assets on a consolidated basis."

3 Q And if you skip the next paragraph and read that last
4 line there.

5 A "On December 28th, 2012 the secured promissory note was
6 extended to June 30th, 2013."

7 Q And if we scroll down on this page to Note 7 which is the
8 related party transactions section, can you just read this
9 first line into the jury.

10 A Sure. "In October and November 2011 the company was
11 advanced \$7,500 from a company related through common
12 ownership. The advance is due on demand."

13 Q And so, this dollar amount, the \$7,500, that was listed
14 here in the related parties transactions?

15 A Yes.

16 Q Even that amount?

17 A Yes.

18 Q Okay. And if we look at page 92 of 92, and we'll look at
19 Note 12 here entitled Subsequent Events, do you know what
20 subsequent events are?

21 A Yes, things that happen after the balance sheet date.

22 Q And what would be the balance sheet date here for this
23 10-K?

24 A It would be December 31st, 2012.

25 Q So, these would be events that occurred after that

Braconi - Direct - Kasulis

4807

1 December 31st, 2012 date?

2 A Correct.

3 Q And in your review of this subsequent events section, and
4 just to be clear, this document was, as you had testified,
5 filed in June of 2013?

6 A That's correct.

7 Q So, is it supposed to list any subsequent events from
8 December 2012 to the filing of the document?

9 A Yes.

10 Q In your review of this section do you see any reference
11 or mention of any settlement agreements with MSMB investors?

12 A No.

13 Q If you look at the last sentence of this section,
14 starting with: In accordance with ASC-855-10, can you please
15 read that for the jury?

16 A "In accordance with ASC-855-10, company management
17 reviewed all material events through the date of this report
18 and there are no material subsequent events to report other
19 than those listed in the note."

20 Q And if we could go to 69 of 92, I think we had referenced
21 it earlier for the date of the filing. Okay.

22 So, this is page 69 of 92, and if we could just zoom
23 in on the -- there we go, perfect. Thank you. What is the
24 date listed here?

25 A June 13, 2013.

Braconi - Direct - Kasulis

4808

1 Q And on the top right-hand portion, who signs on behalf as
2 the Chief Executive Officer of Retrophin?

3 A Martin Shkreli.

4 Q And then in the signature section right underneath that,
5 who signs here?

6 A Martin Shkreli signs as the CEO and director, Marc Panoff
7 signs as the CFO and Steve Aselage as director and Steve
8 Richardson as a director.

9 Q And Mr. Shkreli is listed here as a principal executive
10 officer, is that right?

11 A Yes.

12 Q Now, let's look at the next exhibit, Government
13 Exhibit 610. It's tab 90 of your binder. Can you please
14 explain what this document is, Special Agent Braconi?

15 A This is a SEC form 10-Q for Retrophin, Inc. for the
16 quarter ended March 31st, 2013.

17 Q And if we go to the last page of this document.

18 A Yes.

19 Q Hold on a second. (Pause.)

20 What is the date listed here?

21 A July 24th, 2013.

22 Q And who is it signed by?

23 A Martin Shkreli signs as the Chief Executive Officer and
24 Marc Panoff signs as the Chief Financial Officer.

25 Q And, again, this is the 10-Q for the quarter ending

Braconi - Direct - Kasulis

4809

1 March 31, 2013; so, that's the first quarter of 2013, is that
2 right?

3 A Correct.

4 Q But it is filed on July 24th or signed on July 24th,
5 2013, is that correct?

6 A Yes.

7 Q So, let's go to page 16 of 33 of this document, and if we
8 look at Note Number 9 under the section entitled Notes
9 Payable, Note Payable Related Party; can you please read the
10 first paragraph there for the jury.

11 A "On February 1st, 2012 the company entered into a secured
12 promissory note with a related party in the amount of \$900,000
13 with an interest rate of 12 percent per annum compounded
14 monthly. The remaining \$884,764 principal balance of this
15 note and accrued interest of \$90,650 was repaid during the
16 three months ended March 31, 2013."

17 Q Can you read the next sentence as well.

18 A "Total interest expense recognized for three months ended
19 March 31, 2013 and 2012 and for the period from March 11, 2011
20 (inception) through March 31, 2013 were aggregated to \$19,733,
21 \$17,327 and \$147,480 respectively."

22 Q Thank you.

23 And if we can go to page 18 of 33, it's two pages
24 later, and if we look down there at Note 13 and in the
25 Subsequent Events section; again, what is subsequent events

Braconi - Direct - Kasulis

4810

1 for the purpose of this 10-Q?

2 A It's events that happen after the end of the balance
3 sheet for this quarter which would be March 31st, 2013.

4 Q And is that up until the time that the 10-Q is filed for
5 that period of time?

6 A Yes.

7 Q And if you look at this page and then the rest of the
8 note, Note 13 that goes on through 20 of 33, so if you go to
9 the next page and then the next page and the remainder is at
10 the top of this page for Subsequent Events; is that right?

11 A That's correct.

12 Q Again, do you see any reference to any settlement
13 agreements related to MSMB investors?

14 A No.

15 Q Let's now turn to Government Exhibit 611, it's tab 91 of
16 your binder. And can you please explain to the jury what this
17 is?

18 A This is an amended 10-K form, it is a SEC form for
19 Retrophin, Inc., it's for the year ended December 31st, 2012.

20 Q And when you say "amended," what do you mean by that?

21 A The company decided that they had to restate their
22 financial statements so they had to resend this report to the
23 SEC.

24 Q And they had to restate their financial statements for
25 the year of 2012?

Braconi - Direct - Kasulis

4811

1 A That's correct.

2 Q And if we turn to page 14 of 39 -- it's actually page
3 nine of this document, who signs on behalf of Retrophin, Inc.
4 as the Chief Executive Officer?

5 A Martin Shkreli.

6 Q And the date of this filing?

7 A September 13th, 2013.

8 Q And below that top section who is listed under the
9 signature section for this amended 10-K?

10 A It is Martin Shkreli, Marc Panoff, Steven Aselage and
11 Steve Richardson.

12 Q And if we can go to Note 12, that was page -- we swapped
13 out this document so the page number is a little off.

14 Perfect.

15 For Note 13 -- sorry, Note 12, it is listed as
16 Subsequent Events section, do you see that, Special Agent
17 Braconi?

18 A Yes.

19 Yes, sorry.

20 Q If I can direct your attention to the last paragraph on
21 the page starting in the second quarter of 2013, can you
22 please read this to the jury?

23 A "In the second quarter of 2013 the company, its Chief
24 Executive Officer and a related party became party to a series
25 of agreements to settle up to \$2,286,511 of liabilities which

Braconi - Direct - Kasulis

4812

1 company management believes are the primary obligation of the
2 related party. The company and related party have entered
3 into indemnification agreements whereby the related party has
4 agreed to defend and hold the company harmless against all
5 such obligations and amounts whether paid or unpaid arising
6 from these agreements. Notwithstanding the indemnification,
7 the company recorded a \$2,286,511 charge to operations during
8 the quarter ended June 30th, 2013. That was offset by a
9 corresponding liability of \$1,691,600, or the difference
10 between (A) the aggregate amount of all such settlements and
11 (B) \$593,111 of cash and noncash consideration that the
12 company paid to immediately settle a portion of the agreement
13 on behalf of the related party. Of the total outstanding
14 \$1,691,400 settlement liability, \$300,000 is past due.
15 \$713,900 was due in July 2013 and \$677,500 was due in
16 August 2013. The counterparties to these agreements reserve
17 the right to demand payment at any time. The Chief Executive
18 Officer also agreed to deliver or cause to be delivered 47,128
19 shares of common stock in the company to one of the
20 counterparties as a separate component of one of these
21 agreements. Accordingly, the company does not believe it is
22 required to record a liability for the share-based component
23 of this specific agreement during the second quarter ended
24 June 30th, 2013. There is uncertainty as to whether the
25 related party will have the sufficient liquidity to repay the

Braconi - Direct - Kasulis

4813

1 company or fund the indemnification agreements should it
2 become necessary."

3 Q Thank you, Special Agent Braconi.

4 So, the difference between or one of the differences
5 in this Notes Payable section between the prior 10-K for 2012
6 that we've reviewed and this amended 10-K for 2012 for
7 Retrophin that we're now reviewing is the addition of this
8 language, one of the amendments to the 2012 10-K?

9 A Yes.

10 Q And then directing your attention to Government
11 Exhibit 612, that's tab 92 of your binder, can you please
12 explain this document for the jury?

13 A This is a SEC form 10-Q which was amended and it was for
14 the quarter ended March 31st, 2013, for Retrophin, Inc.

15 Q And if we go to the last page of this document, what is
16 the date of the signing of this document?

17 A September 13th, 2013.

18 Q And who signs as the Chief Executive Officer?

19 A Martin Shkreli.

20 Q And who signs as the Chief Financial Officer?

21 A Marc Panoff.

22 Q And if we go to page 22 of 36, the Subsequent Events
23 section, if you then go to the next page because this note
24 continues, and then the next page, it appears that this entire
25 section is related to the Subsequent Events section of this

Braconi - Direct - Kasulis

4814

1 filing, is that right?

2 A Yes.

3 Q And if we could look in the settlement agreements
4 section, again can you please read this top paragraph to the
5 jury?

6 A "In the second quarter of 2013 the company, its Chief
7 Executive Officer and a related party became party to a series
8 of agreements to settle up to \$2,286,511 of liabilities which
9 company management believes are the primary obligation of the
10 related party. The company and the related party have entered
11 into indemnification agreements whereby the related party has
12 agreed to defend and hold the company harmless against all
13 such obligations and amounts whether paid or unpaid arising
14 from these agreements."

15 Q Go ahead.

16 A "Notwithstanding the indemnification, the company
17 recorded a \$2,286,511 charge to Operations during the quarter
18 ended June 30th, 2013. That was offset by a corresponding
19 liability of \$1,691,400 or the difference between the
20 aggregate amount of all such settlements, and \$593,111 of cash
21 and noncash consideration that the company paid immediately --
22 paid to immediately settle a portion of the agreement on
23 behalf of the related party, the \$1,691,400 settlement
24 liability, \$1,013,900 of which is past due, and \$677,500 which
25 is due in August 2013. The counterparties to these agreements

Braconi - Direct - Kasulis

4815

1 reserve the right to demand payment at any time. The Chief
2 Executive Officer also agreed to deliver or cause to be
3 delivered 47,128 shares of common stock in the company to one
4 of the counterparties as a separate component of the
5 agreements. Accordingly, the company does not believe that it
6 is required to record a liability for the share-based
7 component of this specific agreement during the second quarter
8 ended June 30th, 2013."

9 Q And then if you could read the next two paragraphs?

10 A "There is uncertainty as to whether the related party
11 will have sufficient liquidity to repay the company or fund
12 the indemnification agreements should it become necessary.
13 Concurrent with the execution of the settlement agreements the
14 company received promissory notes from the related party
15 whereby the related party agreed to pay the company the
16 principal amount of \$593,111 plus interest at an annualized
17 rate of 5 percent as reimbursement of the payments that the
18 company made to settle a portion of the agreements."

19 Q And so, what, if any, difference is there between this
20 language in this amended 10-Q and the language in the amended
21 10-K that we reviewed in Government Exhibit 611?

22 A I'd have to check real fast, I think it's -- let me just
23 take a look.

24 (Pause.)

25 Q Special Agent Braconi, if I could direct your attention

Braconi - Direct - Kasulis

4816

1 to the: Of the total outstanding \$1,691,400 Settlement
2 Liability sections of each of these notes payable section.

3 A Yes. So, in the prior 10-K there was \$300,000 past due
4 and in this one there is \$1,013,900 which is past due.

5 Q And there had been in both of the amended SEC filings a
6 note that Chief Executive Officer also agreed to deliver or
7 cause to be delivered 47,128 shares of common stock in the
8 company to one of the counterparties as a separate component
9 of one of the agreements; and just to be clear, who is the
10 Chief Executive Officer who is being referred to here?

11 A Martin Shkreli.

12 Q Okay, so you can put that document aside.

13 If we can look at Government Exhibit 124-10, it's
14 behind the tab after the summary charts.

15 A Sorry, what tab was it again?

16 Q It's the tab after the summary charts. Okay.

17 It is right before Shkreli's statements, do you see
18 that?

19 A Yes.

20 Q So, and I've been showing you what's been marked for
21 identification as Government Exhibit 124-10, do you recognize
22 this document?

23 A Yes.

24 Q And what is it?

25 A It's a Retrophin, LLC transfer letter.

Braconi - Direct - Kasulis

4817

1 MS. KASULIS: The government moves this exhibit into
2 evidence.

3 MR. AGNIFILO: No objection.

4 THE COURT: We will receive 124-10.

5 (Government's Exhibit 124-10 so marked in evidence.)

6 Q Special Agent Braconi, if we could first focus on the top
7 portion of this document; what is this document here?

8 A It's the Retrophin, LLC Transfer and Donee representation
9 letter.

10 Q Can you please read the first sentence of this first
11 paragraph?

12 A "For value received Martin Shkreli does hereby grant,
13 sell, assign, transfer and convey unto MSMB Capital
14 Management, LP, its successors and assigns, all of his rights,
15 title and interest to 75,000 Class B common units of
16 Retrophin, LLC, a Delaware limited liability company, to have
17 and to hold forever and the transferor does hereby warrant and
18 agree to defend title to the same against the claims of any
19 person or entity."

20 Q If we go to the last page of this document, who signs on
21 behalf of Martin Shkreli?

22 A Martin Shkreli.

23 Q And what is the date below his signature for the Martin
24 Shkreli entry?

25 A July 1st, 2012.

Braconi - Direct - Kasulis

4818

1 Q And that's a handwritten date; is that correct?

2 A Yes.

3 Q If you look below that for the MSMB Capital Management LP
4 signature, who appears to sign there?

5 A Martin Shkreli.

6 Q And, again, the record -- I'm sorry, the date below that
7 signature?

8 A Is July 1st, 2012.

9 Q And if you look at the bottom left-hand corner, it's cut
10 off but it appears to be the remainder of Retrophin, LLC and a
11 signature there, do you see that?

12 A Yes.

13 Q Does it appear to be the top portion of Martin Shkreli's
14 signature?

15 A Yes.

16 MS. KASULIS: Your Honor, may I have one moment
17 please to confer?

18 THE COURT: Yes.

19 (Pause in the proceedings.)

20 Q Okay. So, Special Agent Braconi, if we could switch to
21 the next binder, so there are actually two other binders if
22 you could keep handy.

23 So, contained within these two binders I'm showing
24 you what's been marked for identification as -- this is going
25 to be a long list, Government Exhibit 201, 203 through 4, 211

Braconi - Direct - Kasulis

4819

1 through 215, 217 through 218, 220 through 230, 232 through
2 240, 242, 245 through 249, 251 through 255, 258 through 259,
3 261 through 263, 265, 267 through 268, 271 through 272, 274
4 through 277, 283 through 285, 288, 291 through 293, 295
5 through 296, 298 through 301, 304 through 305, 307 through
6 309, 311 through 316, 318, 320, 322 to 323, 325 to 326, 330
7 through 338, 343, 347, 349 through 353, and 355 through 373 in
8 accordance, of course, Your Honor, with the redactions
9 discussed during the lunch break.

10 Special Agent Braconi, have you had an opportunity
11 to review these exhibits?

12 A Yes.

13 (Continued on next page.)
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Braconi - Direct - Kasulis

4820

1 DIRECT EXAMINATION (CONTINUED)

2 BY MS. KASULIS:

3 Q And what are they?

4 A Emails.

5 Q Involving, can you just list some of the recipients or
6 senders?

7 A Martin Shkreli, Evan Greebel, Kevin Mulleady, Ron Tilles
8 I believe, Vaino.

9 MS. KASULIS: The Government moves these Exhibits
10 into evidence.

11 MR. AGNIFILO: Can we have a quick sidebar for 30
12 seconds?

13 THE COURT: Yes.

14 (Continued on the next page.)

15 (Sidebar conference.)

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Sidebar Conference

4821

1 MR. AGNIFILO: I was hoping to see the redactions
2 before it went into evidence.

3 MS. KASULIS: We can admit it then subject to the
4 redactions.

5 MR. AGNIFILO: That's fine. Which exhibit is that?

6 MS. SMITH: I think 353. Then also there is the
7 second one we redacted, a second Kevin Mulleady.

8 MR. AGNIFILO: I'm less concerned with that.

9 The 353 before you put it up, let's make sure it's
10 all good.

11 MS. KASULIS: Your Honor, I was going to say perhaps
12 after, it sounds like Your Honor will admit these documents,
13 after that I think this might be a good breaking point. We're
14 about to start to go into all the e-mails.

15 THE COURT: Okay.

16 MS. KASULIS: I'd like to start fresh with all of
17 the e-mails.

18 THE COURT: I have to be honest with you, I lost you
19 somewhere on this list.

20 MS. KASULIS: I can send a list to everybody.

21 THE COURT: You'll just move to admit all of those.

22 MR. AGNIFILO: That's fine.

23 (End of sidebar conference.)

24 (Continued on the next page.)

25

Proceedings

4822

1 (In open court.)

2 MS. KASULIS: Your Honor, subject to the redactions
3 that we discussed, the Government moves these Exhibits into
4 evidence.

5 MR. AGNIFILO: We have no objection.

6 THE COURT: All right. We will admit the foregoing
7 exhibits into evidence subject to those redactions.

8 (Government's Exhibit Numbers 201, 203-204, 211-215,
9 217-218, 220-230, 232-240, 242, 245-249, 251-255, 258-259,
10 261-263, 265, 267-268, 271-272, 274-277, 283-285, 288,
11 291-293, 295-296, 298-301, 304-205, 307-309, 311-316, 318,
12 320, 322-323, 325-326, 330-338, 343, 347, and 349-373 so
13 marked and received in evidence.)

14 MS. KASULIS: Thank you, Your Honor.

15 Perhaps now might be a good breaking point because
16 we're about to embark on a whole new segment on the direct
17 examination.

18 THE COURT: I'll now excuse the members of the jury.
19 And ask them please not to discuss the case. Avoid all media
20 exposure to anything touching upon the case or Mr. Shkreli.

21 Thank you again for your service. See you tomorrow
22 at 9:00 o'clock.

23 (Jury exits the courtroom.)

24 THE COURT: Sir, you can step down. Thank you.

25 (Whereupon, the witness steps down.)

Proceedings

4823

1 THE COURT: Have a seat, please. I just wanted to
2 discuss a couple of things. One in particular, regarding the
3 conspiracy to commit wire fraud charge and ask the Government
4 whether its proposed charge was intended to actually
5 incorporate as proposed the entire wire fraud instruction or
6 whether or not there could be or should be some abbreviated
7 form of the proposed instruction that would instead describe
8 the elements of wire fraud but really focus on the elements
9 for conspiracy. We're in the process of trying to draft those
10 charges and hope that we can post them so we can have a
11 charging conference maybe on possibly Wednesday.

12 MS. KASULIS: Yes, Your Honor. Your Honor, could we
13 just right after this just quickly take a look at what you're
14 proposing or what you're asking us about, then we can get back
15 to you pretty immediately.

16 THE COURT: There are were two other issues to bring
17 to the parties' attentions. Specifically, I received an
18 inquiry from a member of the press whether, first, when the
19 Court would be willing to publish the names of the jurors.
20 And two, whether or not I would allow electronic devices in
21 this courtroom during the time that the jury returns its
22 verdict.

23 I don't know whether any of the parties wanted to
24 weigh in on these requests. I did have a view and I'm happy
25 to hear from the parties before I announce it.

1 MR. BRAFMAN: Your Honor, we would object to the
2 publishing of the jurors' names until after the verdict has
3 been returned. And we would strongly object to electronic
4 devices in the courtroom when the jury renders its verdict.
5 They are tweeting in the overflow room in realtime. I'm not
6 certain there is any harm that goes to the press if they are
7 not in this room with electronic devices. I think it's a bad
8 precedent to set in this building. I'm not certain it's ever
9 been done before.

10 THE COURT: I'm told by this member of the press
11 that it has been done in other cases; although, I'm not sure
12 which cases. But did the Government have a view?

13 MS. KASULIS: Your Honor, we agree with the defense,
14 with respect to -- we agree with the defense with respect to
15 the publishing of the jurors' names until after the verdict.

16 With respect to the electronic devices in the
17 courtroom, we again are in agreement with the defense. I
18 think one of the issues with the opening statement was that
19 the sound was not working in the overflow room and so
20 hopefully we just confirm that the AV system is working in the
21 overflow. Then of course in that room they are able to have
22 their electronic devices for when the verdict comes back.

23 THE COURT: Well, I will say that I was inclined and
24 am inclined to agree with both parties. I think that
25 publishing the names of jurors before the verdict would

1 present possible concerns if the jurors were to find out their
2 names were published. It could influence their deliberations
3 and I wouldn't want that to be a factor in their
4 deliberations. I think as we've instructed them over and
5 over, and will instruct yet again, that their verdict must be
6 based on evidence at this trial.

7 Second, with regard to the electronic devices in the
8 courtroom, I think the proposal was to allow member of the
9 Eastern District press pool, which I've consulted with our
10 Chief Judge and the District Executive, and they agreed it
11 would not be right to discriminate one group of journalists
12 over another. If the journalists want access to electronic
13 devices, there is a room where they are allowed to convey the
14 verdict in realtime. I also want to say that publishing the
15 jury must be an incredibly stressful situation for Mr. Shkreli
16 or any other defendant who is awaiting a verdict determining
17 his or her fate. I think it would be most respectful to
18 maintain the current /STAT us quo. And certainly if
19 journalists wish to communicate with their organizations in
20 realtime they can do that from the overflow room.

21 Is there anything else I should address before we
22 adjourn for the day?

23 MS. KASULIS: Not for the Government.

24 THE COURT: We will try very hard to post up the
25 instructions by tomorrow morning, at the latest assuming we

Proceedings

4826

1 will hear from the Government. Right now they are roughly 97
2 pages. We'd love to find a way to stream line without
3 neglecting any important instructions.

4 We will include the advice of counsel instruction.
5 And I hope if anyone has anything else to add or say about the
6 instructions we would be informed of it by 7:00 o'clock
7 tonight, if that's possible.

8 MR. BRAFMAN: You have, I think, included in the
9 instruction defendant's not required to testify?

10 THE COURT: Yes.

11 MR. BRAFMAN: Okay. Thank you.

12 THE COURT: In fact, my instruction provides that
13 the jurors can't even discuss it during deliberations.

14 MR. BRAFMAN: And they cannot draw any inference
15 from it.

16 THE COURT: Yes, of course. Anything else?

17 MS. KASULIS: No Your Honor.

18 THE COURT: I just want to confirm, Mr. Shkreli is
19 not going to testify or is he still reserving that decision?

20 MR. BRAFMAN: I think we have pretty much concluded
21 he's not going to testify.

22 THE COURT: I did want to make sure that Mr. Shkreli
23 does understand that he has a right not to testify and he also
24 has a right to testify.

25 And do you understand that you have rights both

Proceedings

4827

1 ways, sir?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you also understand that this is an
4 important decision, and it is your decision alone and nobody
5 else's. Do you understand that, sir?

6 THE DEFENDANT: Yes.

7 THE COURT: And have you had sufficient time to
8 confer with your very able counsel, all four of them, about
9 this very important decision?

10 THE DEFENDANT: Yes.

11 THE COURT: Is it your decision, sir, not to
12 testify?

13 THE DEFENDANT: Correct.

14 THE COURT: Thank you, sir.

15 Have a good night everybody.

16 (Proceedings adjourned at 3:55 p.m. to resume on
17 July 25, 2017 at 9:00 a.m.)

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19

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21

22

23

24

25

INDEX

4828

1 W I T N E S S E S / E X A M I N A T I O N S

2 R O B E R T B A R N E T T

3 DIRECT EXAMINATION 4624
 4 BY MS. KASULIS:

5 CROSS EXAMINATION 4681
 6 BY MR. AGNIFILO

7
 8 C H A N D R A M O H A N S I N G H
 M E H E T A

9 DIRECT EXAMINATION 4692
 10 BY MS. SMITH

11 CROSS-EXAMINATION 4704
 12 BY MR. AGNIFILO
 REDIRECT EXAMINATION 4729
 13 BY MS. SMITH

14 M I C H A E L B R A C O N I

15 DIRECT EXAMINATION 4756
 16 BY MS. KASULIS:

17 VOIR DIRE EXAMINATION 4774
 18 BY MR. AGNIFILO

19 DIRECT EXAMINATION (CONTINUED) 4774
 20 BY MS. KASULIS

21 VOIR DIRE EXAMINATION 4798
 22 BY MR. AGNIFILO

23
 24 DIRECT EXAMINATION (CONTINUED) 4798
 25 BY MS. KASULIS

	INDEX	4829
1	E X H I B I T S	
2	Government's Exhibit 127-4	4629
3	Government's Exhibit 127-3	4638
4	Government's Exhibit 127-5	4642
5	Government's Exhibit 127-6	4655
6	Government's Exhibit 127-7	4659
7	Government's Exhibit Number 127-8	4664
8	Government's Exhibit Number 127-9	4668
9	Government's Exhibit Number 27-10	4669
10	Government's Exhibit Number 127-11	4671
11	Government's Exhibit Number 127-13	4675
12	Government's Exhibit Numbers 126-1 through 126-5,	4700
13	126-14, 126-20 through 126-29, 126-31 through	
14	126-32 and 126-33	
15	Government's Exhibit 356	4743
16	Government's Exhibits 364 through 367	4750
17	Government's Exhibit Number 907, 808, and 809	4754
18	Government's Exhibit Number 902 through 908, 916	4758
19	through 918, 926, 926, 932, and 935	
20	Government's Exhibit Number 78-1 through 78-6;	4768
21	94-1 through 94-13; 85-1 through 85-4; 86-1,	
22	86-2; 87-1, 88-1 through 88-4; 89-1 through	
23	89-16; 90-1 through 90-9; 92-1 through 92-11;	
24	93-1 through 93-5; and 94-1	
25	Government's Exhibit Number 704	4774
	Government's Exhibit 705	4797
	Government's Exhibit 705	4798
	Government's Exhibit 609 through 612, 618 and 619	4801

INDEX

4830

E X H I B I T S C O N T I N E D

Government's Exhibit 124-10 4817

Government's Exhibit Numbers 201, 203-204, 4822
211-215, 217-218, 220-230, 232-240, 242, 245-249,
251-255, 258-259, 261-263, 265, 267-268, 271-272,
274-277, 283-285, 288, 291-293, 295-296, 298-301,
304-205, 307-309, 311-316, 318, 320, 322-323,
325-326, 330-338, 343, 347, and 349-373